

ASSESSMENT OF THE
MONGOLIAN LAW ON NON-GOVERNMENTAL ORGANISATIONS

CHAPTER 1

**THE RELATIONSHIP OF CIVIC
ORGANIZATIONS TO SOCIETY**

There are many reasons why each country aims to have sophisticated laws that would assure the existence of independent, vigorous and strong civic organizations. The most important of these is to protect and enforce the internationally recognized rights and freedoms of expression, association, and peaceful assembly. Besides that these freedoms are proclaimed in international covenants and regional treaties, the countries guarantee those freedoms by transforming them into their constitutions and other national laws.

To fully exercise these freedoms the countries should not strictly require the establishment under a national civic organization law of a formal entity with legal personality. However, laws permitting interest groups to establish themselves as entities with legal personality strengthen the exercise of these freedoms. Although it is conceivable that a person individually may express himself to others and be heard, it is common knowledge that if persons with common interests and objectives band together and organize groups, they can be heard much better by public. Only by allowing and protecting both formal and informal civic organizations do the laws of a country give real meaning to the freedoms of expression, association, and peaceful assembly.

Article 19 of the Universal Declaration of Human Rights of 1948 declares that “everyone has the right to freedom of opinion and expression,” and the guarantee for exercising this freedom is Article 20, which protects the right of individuals to “peaceful assembly and association.” Although this Declaration of international importance unanimously adopted by the United Nations Member States has an advisory character, eventually it has come to have a binding effect in the national laws. Moreover, majority of provisions of the Declaration on rights and freedoms has been reconfirmed in other multilateral treaties.

For instance, the International Covenant on Civil and Political Rights creates direct binding obligations for nearly all world countries, which have ratified and acceded to it. Articles 19, 21 and 22 of the Covenant guarantee the rights of expression, peaceful assembly, and association respectively, and countries may restrict these rights and freedoms by their national laws only for the interests of national security, public safety, public morals or health, or the rights or freedoms of others.

The International Covenant, by its terms, guarantees rights enjoyed by individuals and requires the States Party to take appropriate measures for the adoption of national laws assuring these rights and freedoms. It does not necessarily require passing laws allowing civic organizations to exist. Constitutions of many European countries protect rights of juridical persons as those of natural persons and the rights of juridical persons essentially embody the freedoms of expression, association and peaceful assembly. Furthermore, there is no doubt that the absence of laws permitting formal civic organizations to exist jeopardizes and curtails the individual rights guaranteed by the Covenant.

The 1950 European Convention on Human Rights Article 10 enshrines “the rights of freedom of expression,” and Article 11 “the freedom of association and peaceful assembly.” The Article 25 of the Convention establishes a complaint procedure that entertains petitions addressed to the Secretary General of the Council of Europe from “any person, non-governmental organization or group of individuals claiming to be the victim of a violation.” This means that the rights mentioned in Article 10 and 11 equally pertain to juridical persons such as formal civic organizations. Many of the States Party have recognized this right of petition to the Commission in their organic legislation and have also recognized the compulsory jurisdiction of the Court. The Council of Europe imposes obligations on its members to respect these rights of their citizens. The constitutions of all countries in the region guarantee the freedoms of expression, association and peaceful assembly. Many Asian countries including Mongolia have these provisions in their constitutions. Moreover, many constitutions require that their provisions related to human rights be interpreted in conformity with international human

rights treaties or incorporate these treaties into domestic law. A number of Mongolian laws have a provision that in case of a conflict of an international treaty with a domestic law, an international treaty, which has a supreme power, shall preempt a domestic law. It is common that the countries prescribe in their laws that “rights and freedoms shall be exercised according to law” and “rights and freedoms may be legitimately limited.” Undoubtedly, to the extent that international law is incorporated into domestic legislation, restrictive laws must conform to the strictly construed limitations found therein.

Virtually all countries have laws that govern the activities of civic organizations. According to the Mongolian law, civic organizations may be created in three forms such as the foundation, association and cooperative. However, the public benefit civic organizations may be created in the forms of the foundation and association only. Civic organizations desiring formal recognition face the confusing task to choose the legal form. Moreover, the laws of all countries prescribe special tax rules for each form of a civic organization.

In addition to protecting and enforcing fundamental freedoms, the objective of every society to adopt a law supporting a vigorous and independent sector of formal civic organizations is coupled with a purpose to encourage pluralism, promote respect for the rule of law, support democracy and promote economic efficiency.

There are many differences among the members constituting any society. Individuals and groups have diverse interests and needs. Civic organization laws help individuals and groups to pursue their interests and needs (e.g., preservation of particular language or culture). By encouraging the pluralism, we express as a society the fact that we value and respect the diversity among us and in doing so, we also endorse the principle of tolerance. Not only is diversity unavoidable, it is desirable. In many societies, people come from different ethnic backgrounds, speak different languages, and practice different religions. They are of different sexes, different ages and pursue different professions. The beliefs and interests emanating from these differences can be expressed in a legal or an illegal manner. Failure to provide the conditions for exercising it legally roots the risk to drive groups underground and creates an irreconcilable social antagonism. Conversely, the recognition and protection of the civic organizations by law drains the social pressure and seeds the crop for the steadfast development of a society. The existence of diverse civic organizations helps to promote stable societies where there is respect for the rule of law.

Although the democratic government is not the classic and the most perfect form of government, it has been recognized as the one that zealously represents and protects the interests of its citizens. For democracy to succeed, each segment of society must believe that state institutions can generally be trusted and that it will have a chance to influence the decisions through elected representatives. The establishment of a civic organization sector that is accountable is the pre-condition for the long-range success of democracy through the support of pluralism.

Another vital role of civic organizations is the mitigation of the majoritarianism set in a society and enabling the marginal groups to see their abandoned ideas reflected in the policies of the state. Thus, the civic organization is a key by means of which the interests of the marginal groups are not suppressed by the wishes of the majority.

In comparison with state organs, civic organizations provide public goods and services more efficiently with relatively lower costs. To the extent that the private individuals devote time and energy to their interests (assistance to the elderly or the handicapped) and volunteer, there is a cost and resource saving to the government. Although the civic sector is not the for-profit sector, in order to be able to deliver public goods, it is inevitably within the real competition for grants, contracts and donations with other organizations. States and private donors look to civic organizations to provide a wide range of basic services to the public. Furthermore, a small civic organization with clearly defined objectives is relatively close to people and far more likely to know best and identify their real needs than a large state organ. State and for-profit entities simply cannot and do not anticipate and provide all of the public goods and services that are desired by the citizenry. In particular, it is impossible to discover each time the willingness of substantial number of people in Mongolia to provide substantial funds and services for the preservation of ancient art and cultural items of historical significance or other desires of thousands of people alike, and meet those needs in responsive, adequate and even-handed manner. There is insufficient economic incentive for the private sector to step in and provide those needs. Some world countries with the purpose to reduce the workload of government not only

privatize state-owned enterprises, but also have adopted special laws to accomplish similar privatization of social and cultural organizations. Therefore, the predicament for growth and enrichment of the society is to adequately define the legal status of civic organizations.

CHAPTER 2

THE RELATIONSHIP OF CIVIC ORGANIZATION LAWS TO OTHER LAWS

2.1. THE RELATIONSHIP OF THE LAW OF MONGOLIA ON NON-GOVERNMENTAL ORGANIZATIONS TO INTERNATIONAL LAW GUARANTEEING FUNDAMENTAL FREEDOMS

The right to create and participate in civic organizations can be inferred from the rights to freedom of expression, association, and peaceful assembly articulated in such instruments as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In addition to the fact that these documents of international significance are the indispensable part of the law of Mongolia, they are of equal force as the domestic legislation. However, Mongolia defined the supremacy of international treaties by prescribing in its law that “if the international treaty of Mongolia states otherwise than the legislation of Mongolia, the international treaty shall be followed.” /The Law of Mongolia on International Treaties, 1993/. In general, Mongolia has approximately 220 general normative laws effective today, 140 of which contain the proviso on the force of international treaties.

Mongolia, as the member, has ordained the Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly on 10 December 1948 as a common standard to be followed in the human rights area of the country. It officially ratified and acceded to the International Covenant on Civil and Political Rights, which is the fundamental instrument of the international human rights law, in 1974. Moreover, Mongolia fully reflected in its Constitution the principles of these international instruments related to the freedom of association. The Chapter on Human Rights and Freedoms of the Constitution states that “The citizens of Mongolia are guaranteed to enjoy the following rights and freedoms: ...10/ The right of freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and beliefs.” /The Constitution of Mongolia, Chapter 2, Article 16, para.10, 1992/.

The Law of Mongolia on Non-Governmental Organizations was adopted on 31 January 1997 with the purpose to implement the freedom of association guaranteed by the above-mentioned provision of the Constitution and the international treaty of Mongolia. It is the fundamental law on non-governmental organizations with 25 articles and 7 chapters, which embodies general provisions related to the purpose of the law, definitions, and right to create non-governmental organizations as well as regulatory provisions on creation, management, and dissolution of these organizations.

Realization of the rights to freedom of expression, association, and peaceful assembly requires, at a minimum, creating the legal environment in which the governments would not interfere in and impede the creation and activity of civic organizations. The Law of Mongolia on Non-Governmental Organizations states that “a non-governmental organization shall be independent of the government,” “The citizens and juridical persons other than non-governmental organizations have a right to create non-governmental organization independently or in groups with others on the basis of their interests and opinions without obtaining any permit from governmental organs,” and “it is prohibited to discriminate and restrict the rights and freedoms as a retaliation for association to such organizations.” /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.1, 4; Article 9, para.2, 1997/. These provisions conform to the requirements of international law that a civic organization must be independent of the government. According to the International Covenant on Civil and Political Rights, states may impose legitimate restrictions on the enjoyment of these rights only for the protection of rights and freedoms of others, national security, public safety and morals. This was also guaranteed by the provision of the law, which states that “It is prohibited to unlawfully restrict the right of citizens to create non-governmental organizations.” /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.2, 1997/.

The United Nations Committee on Human Rights is enabled to receive and consider, as provided in the Optional Protocol to the International Covenant on Civil and Political Rights, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. The Committee receives communications of individuals of a State, which is a party to the Optional Covenant, and only after they have exhausted all available domestic remedies. Mongolia ratified and acceded to the Optional Protocol to the International Covenant on Civil and Political Rights in 1991. In addition, the mechanism for the implementation of the rights mentioned in these international instruments has been set up in the domestic law. As mentioned in the Constitution of Mongolia, “the citizens of Mongolia are guaranteed to enjoy the right to appeal to the court to protect his/her rights if he/she considers that the rights and freedoms as spelt out by the Mongolian law or an international treaty have been violated.” /The Constitution of Mongolia, Chapter 2, Article 16, para.14, 1992/. Furthermore, under the special part of the Criminal Code of Mongolia, the violation of freedom of association of citizens is classified as one type of a crime against the political and other human rights and freedoms. In particular, according to the Code “in case of discrimination and restriction of the rights and freedoms as a retaliation for association and membership to legitimate political parties and other voluntary organizations such person shall be sentenced to up to 3 years of imprisonment or shall pay a penalty in the sum of 5,000-100,000 MNT.”

Thus, Mongolia with the objective to implement the fundamental right and freedom of association and creation of civic organizations in line with the principles of international law has guaranteed them in its Constitution and other laws.

2.2. THE RELATIONSHIP OF THE LAW OF MONGOLIA ON NON-GOVERNMENTAL ORGANIZATIONS TO OTHER LAWS IN THE NATIONAL LEGAL SYSTEM

2.2.1. Acquisition of Legal Status and Its Consequences: Laws governing the establishment of civic organizations as formal legal entities generally confer limited liability on them. Other privileges (such as access to tax preferences and state contracts) may be conditioned on the establishment of a formal civic organization.

According to the Civil Code of Mongolia, a civic organization /has the same meaning and used interchangeably with the term “non-governmental organization”/ is defined as “a union of individuals and juridical persons voluntarily associated on the basis of their intellectual, material and other interests and shall be not for-profit. In addition, the Code has the general provisions defining the legal status of non-governmental organizations such that “the non-governmental organization shall be classified as a juridical person with a detached property in which the promoters or creators do not retain the rights.” /The Civil Code of Mongolia, Article 21, para.5; Article 36, 1994/.

On the basis of the Code provision, which stipulates that “the legal status of a foundation, civic and religious organization shall be defined by law,” the State Ih Hural of Mongolia adopted the Law on Non-Governmental Organizations on 31 January 1997. The purpose of the law is to regulate matters related to the association of individuals, creation of non-governmental organizations and activities of non-governmental organizations in order to implement human rights proclaimed in the Constitution and the international treaties of Mongolia. /The Law on Non-Governmental Organizations, Article 1, 1997). The application of law is extended only to non-governmental organizations except for political parties, trade unions, churches and temples./Id. Article 3, para.1).

This fundamental law on non-governmental organizations stipulates that “a non-governmental organization shall be deemed to be created upon the decision of founders to create such organization and the adoption of its charter and that it shall enjoy the rights of a juridical person upon the registration with a public registry.” The provision is to be interpreted as that the founders are free to make an independent decision on the choice of a status of a juridical person.

According to the Civil Code of Mongolia, a juridical person is defined as “an entity which owns, possesses or conveys its separate property, incurs rights and liabilities from its own activities, severally liable for the debts and obligations incurred by its own activities, and participates on its own behalf in the court and arbitration proceedings.” The advantage of choosing the status of a juridical person is that a non-governmental organization is severally liable for the debts and obligations

incurred from contracts in its own name and other legal transactions while the founders are not be jointly liable. However, the law also specifies the grounds for holding the founders liable for the obligations they incur from their own wrongful conduct. Precisely, “the non-governmental organization shall not be liable for the wrongs caused to individuals, legal entities and organizations by the unlawful conduct of a member, a governing board member and employee of the non-governmental organization.” /The Law of Mongolia on Non-Governmental Organizations, Article 12, para.5, 1997/.

2.2.2. Rights, Remedies and Sanctions: Formal civic organizations should have the same general rights and obligations as other juridical persons and should be subject to the same civil law and criminal law duties and sanctions that are generally applicable to juridical persons, except to the extent that specific limitations are provided by law in accordance with generally accepted principles as described in these Guidelines. General rules for the establishment of branches, subsidiaries, and affiliates of legal entities should apply to civic organizations.

Currently, eighty-two laws effective in Mongolia /according to our study/ define civic organizations in different terms such as “a non-governmental organization,” or “a voluntary organization.” Though in the latest laws adopted, it has been defined as “a non-governmental organization.” Although the term “civic organization” is not precisely stated in the laws as such, there are approximately forty laws in force related to it. Accurately, there are more than one hundred and twenty laws in force directly or indirectly related to the rights, obligations and liabilities, i.e. legal status of non-governmental organizations.

The law prescribes non-governmental organizations the same legal capacity as other juridical persons and subjects them to the same civil law and criminal law duties and sanctions. Upon registration with the public registry, a non-governmental organization acquires the legal personality and becomes a juridical person. The inferior rights necessary for the normal operation of a civic organization, such as the right to contract in its own name, acquire and sell real property, lease office space and equipment, perform bank account transactions, avail themselves to the enjoyment of such organizations. The legal capacity of a non-governmental organization is defined by the general principles of the Civil Code. For instance, the provision, which states that “a juridical person shall enjoy the rights and be subject to the duties compatible with the purpose of activities indicated in the founding articles,” is equally applicable to civic organizations. /The Civil Code of Mongolia, Article 22, para.1, 1994/.

A civic organization may also consolidate with other juridical persons. According to the Civil Code of Mongolia, “a voluntary organization may consolidate with others and the resulting entity shall have a form of a not-for-profit organization only. The participants in the consolidation shall retain the rights of a juridical person.” /Id. Article 35, para.3, 4/.

The employees and officers of a non-governmental organization are also the subjects of the employment laws. They are equally entitled to minimum wages, have the right to protect their rights by forming labor unions, and be subject to employment-based taxes and levies.

The donations granted to publicly registered public benefit non-governmental organizations and educational funds are exempt from income taxation. /The Law of Mongolia on Personal Income Taxation, Article 9, para.1, 1992/.

A non-governmental organization is required to keep the accounting books in conformity with the requirements of the accounting laws. /These rights and obligations will be discussed later in detail in the subsequent chapters/.

2.2.3. Administrative and Judicial Review: All acts or decisions affecting formal civic organizations should be subject to the same administrative and judicial review that is generally applicable to all legal persons. Specifically, decisions to refuse to register a civic organization, to impose fines, taxes, or other sanctions on it, or to dissolve or terminate it, should be appealable to independent courts. A reasonable time period should be available for such appeals. Where necessary, the civic organization law should specifically reinforce these rights.

The Law on Non-Governmental Organizations specifically provides that “the Ministry of Justice shall give an official response with justification of the refusal to register a non-governmental organization and if to challenge such a decision there is a right to make a petition in the court.” This means that in case a non-governmental organization considers that an administrative decision concerning its activities violates its rights, it has a method of restoring its rights by resort to a court proceeding.

In addition, according to the Civil Code of Mongolia, courts have several methods for remedying the rights violated. Particularly, this includes the right to annul a decision of a state administrative agency and other administrative decisions violating the rights of others. /The Civil Code of Mongolia, Article 5, Section 5, para.7, 1994/. This Civil Code remedy is equally applicable to non-governmental organizations.

CHAPTER 3

LEGAL STATUS OF CIVIC ORGANIZATIONS

3.1. CREATION OF CIVIC ORGANIZATIONS

3.1.1. The law may require that certain formal acts must occur to create a formal civic organization.

On the basis of freedom of expression and association indicated in the relevant provisions of the International Covenant on Civil and Political Rights /1966/ and the Constitution of Mongolia /1992/, non-governmental organizations and citizens have been guaranteed the right to create a non-governmental organization individually or in groups in accordance with their interests and opinions without obtaining a permit from other legal entities and state organs. It is also prohibited to illegitimately limit those rights and freedoms. /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.1, 2/.

If citizens are to exercise these rights and create a non-governmental organization as a juridical person and express their opinion to the public, they are required to abide by certain rules prescribed by the law. Paragraph 1 of the Article 23 of the Civil Code of Mongolia provides that individuals, the government and its authorized organs as well as other legal entities, foreign citizens, foreign legal entities and stateless persons may create the legal entity according to the procedures prescribed by the law. According to paragraph 10 of Article 23 of the Civil Code “a legal entity that should be registered according to the procedure prescribed by law shall be considered created upon its registration with the public registry and unless otherwise stated in the law, other legal entities upon a decision of a competent authority and adoption of a charter respectively. Moreover, the Law of Mongolia on Non-Governmental Organizations Article 6 provides that a non-governmental organization shall be considered created upon the decision of the meeting of founders to create a non-governmental organization and adoption of a charter as well as it shall obtain an official status and enjoy the rights of a juridical person upon the registration with the public registry, i.e. with the Ministry of Justice and Home Affairs. The structure of a non-governmental organization charter defined in Article 10 of Chapter 2 of the same law named “General Requirements for Non-Governmental Organizations” are discussed in detail in Chapter 4.

3.1.2. The law should state clearly the rights and duties incurred by a civic organization during the period of creation, including issues about transfers of property, etc.

The class of legal entities in the separate property of which the founders or promoters do not retain the rights includes non-governmental and religious organizations as well as charitable and other funds. /The Civil Code of Mongolia, Article 21, para.5/. The property transferred to non-governmental organizations and funds are only in the ownership of these organizations and must be disbursed only for the implementation of objectives mentioned in the charter. Therefore, founders and promoters of non-governmental organizations and funds may not reacquire the property transferred to the ownership

of these organizations in case of leave, dissolution of a non-governmental organization etc. In other words, the property rights can not be reclaimed. This is reflected in paragraph 6, concluding an agreement to create a legal entity, and paragraph 7, where there is defined a procedure of cooperation of parties to this agreement on creation, a condition of transfer of individuals property to legal entity's right of ownership, possession, use and conveyance and participation in the operation of a legal entity. The promoters and founders shall be responsible as stipulated in law for all liabilities incurred from the activities before the creation of a legal entity.

3.2. REGISTRATION OF CIVIC ORGANIZATIONS

3.2.1. Civic organization laws should be written and administered so that it is quick, easy, and inexpensive to register a civic organization as a juridical person. Registration should be allowed for branches of foreign and, where necessary, domestic civic organizations.

A chairman of the Board submits an application for registration of a non-governmental organization with the public registry to the Ministry of Justice and Home Affairs with all relevant documents that include the name and address of a non-governmental organization, of a chairman, members of the Board of Directors and of the Executive Officer together with a charter of an organization and the document providing a proof of payment of a stamp duty. However, the registration of foreign and international non-governmental organizations requires some additional documents to be attached to the application. An application for registration with the public registry and all relevant documents are delivered, if within the capital city directly to the Ministry of Justice and Home Affairs, and if within other localities and/or it is impossible to deliver in person or through others, then through the local administrative body, which are the offices of the soum and aimag Mayor.

The body that first received an application for registration of a non-governmental organization and other relevant documents has a duty to officially notify a non-governmental organization of the date of the receipt of such documents. The Ministry of Justice and Home Affairs discusses the documents fulfilling appropriate requirements through its Governing Board. The Minister of Justice and Home Affairs makes a decree on the basis of minutes of the Governing Board meeting and in accordance with the decree a non-governmental organization is registered with the public registry and issued a certificate of registration. Until recently, up to the adoption of a renewed procedure on the registration of non-governmental organizations, the Ministry officer in charge of non-governmental organizations had been deciding this issue independently and directly.

A stamp duty for the registration of a domestic non-governmental organization with the public registry is 10,000 MNT and the certificate fee is 2,500 MNT. A stamp duty for the registration of a representative office of a foreign or international non-governmental organization with the public registry is 500 US Dollars or MN Tugrugs equivalent to it and a certificate fee is 10 US Dollars.

3.2.2. The registration of a civic organization should require filing only a small number of clearly defined documents.

In the year of 2000 by the decree N°50 the procedure for registration of a domestic non-governmental organization and issuance of certificates and by the decree N°72 the procedure for granting permits for opening and operation of a representative office of a foreign and international non-governmental organization of the Minister of Justice and Home Affairs have been respectively adopted anew on the basis of Paragraph 7 of Article 16 of the Law on Non-Governmental Organizations/. Before the procedure for registration of non-governmental organizations and issuance of certificates was adopted and regulated by the decrees N°80, 154 of 1997 of the Minister of Justice/. As mentioned in this procedure A. a domestic non-governmental organization must file the following documents: 1/application and minutes of the founders meeting; 2/ an official decision made by the founders meeting on the creation of a non-governmental organization, selection of the management and adoption of a charter; 3/ if a special permit is required for the operation of an organization, then such permit issued by a competent authority; 4/ bylaws reflecting the range of activities to be

performed and sources of financing for achieving the objectives; 5/ a document providing the proof of payment of a registration fee; B. a representative office of a foreign or international non-governmental organization must file the following documents: 1/ a request for operation of a representative office that states objectives, range of activities, sources of financing and future perspectives of an organization and that includes a certified copy of an agreement concluded with a relevant Mongolian organization; 2/ a presentation and a charter of an organization, a certified copy of the certificate registered in accordance with the laws of a specific country, or a letter of certificate from a competent organ of such country; 3/ range of activities an organization will engage in, its structure, number of persons, their terms of reference and a power of attorney issued to the head of a representative office; 4/ if under the law of a foreign country, there exists a procedure for obtaining a permit from a competent authority in order to establish and operate a representative office overseas, a certified copy of such a permit; 5/ a document providing the proof of payment of a permit license fee. In addition, they fill in and attach Form N°1 that contains the questionnaire including name, business address, position, home address, number of a certificate of citizenship and registration number, or the form otherwise called imprinted form for registration of founders and members of the Governing Board of a non-governmental organization and imprinted Form N°2 for registration of information on location, organizational structure and management of a non-governmental organization. According to the above-mentioned procedure, if there are any changes in location and address of a non-governmental organization, it is stated that it shall officially notify the Ministry of Justice and Home Affairs of such changes within 14 days from the date of such change.

However, there is no any regulation concerning the notification of changes in the management and organizational structure of an organization reflected either in the law or in the procedure. A non-governmental organization must register with a tax authority within its pertinent district within 7 days from the date of registration with the Ministry of Justice and Home Affairs and to so officially notify the Ministry. A non-governmental organization has an obligatory duty to register with a tax authority located within the district where an organization resides and must file an official letter requesting registration with a tax authority together with a copy of certificate issued by the Ministry of Justice and Home Affairs, charter of an organization, registration form containing a number of a settlement account held with the bank and the address of a location of an organization. A tax authority of a pertinent district registers a non-governmental organization as a taxpayer and issues a certificate.

3.2.3. The registration of a civic organization should involve relatively little bureaucratic judgment or discretion as to the permitted purposes of the organization and the means by which it intends to pursue those purposes.

According to the Law on Public Service Paragraph 1 and 3 of Article 13 on general duties for public servants, an officer at any level in charge of registration of a non-governmental organization must perform his/her duties respecting and abiding by the Constitution and other laws, and act within the authority given to him/her for the welfare of the nation and people obeying to the interests of the government as a citizen. There must be no any bureaucratic action from the side of the government taken in relation to the registration of a non-governmental organization. Conversely, if the application for registration with the public registry and other pertinent documents fail to fulfill the applicable requirements due to incompleteness, the body that first received the application must return them to the non-governmental that requested registration. /The Law of Mongolia on Non-Governmental Organizations, Article 16, para.5/. An officer returning the application must give explanation and assistance to the applicant on elimination of incompleteness of pertinent documents and on the category of requirements that need to be fulfilled.

3.2.4. The registration rules should set short time limits within which the registration agency must act (e.g., a maximum of sixty days) and should provide that failure to act on complete registration applications within the required time results in a presumptive approval. In certain situations (e.g., disaster relief) registration should occur more quickly. The registration agency should be required to provide a written statement of reasons for any refusal to register a civic organization.

Within 30 days after the receipt of a complete documentation fulfilling the pertinent requirements, the Ministry of Justice and Home Affairs shall make one of the two decisions, either to register a non-governmental organization or refuse to register according to the law. If a non-governmental organization does not receive an official response from the Ministry of Justice and Home Affairs within 30 days, it shall be presumed to be legally registered, may conduct its activities and according to applicable procedure obtain its certificate. /The Law of Mongolia on Non-Governmental Organizations, Article 16, para.10/.

There are cases when non-governmental organizations were registered with the public registry due to some emergency situations despite the time period mentioned above. In the fall of 2000 there was a heavy snowfall in the country and the weather was extremely cold in the majority of its territory /in some territories of countryside the temperature was 40°C below zero/. Due to this disaster the living conditions of herders worsened and a huge number of livestock died. During this time a non-governmental organization founded with the objective to help and give assistance to the victims of a natural disaster, and accumulate donations for these victims named “Mongolian Foundation for Help to Victims of Natural Disaster” was registered on 17 February 2000 upon the request of its founders and given the registration number 1002716 despite the time period mandated by law. However, there is no existing provision regulating this either in the law or in the procedure.

If, however, the objectives of a non-governmental organization do not conform to the laws of Mongolia or if the name of a non-governmental organization coincide with the name of a non-governmental organization registered before, it shall not be registered. Paragraph 8 of Article 23 of the Civil Code of Mongolia, Paragraph 8 of Article 16 of the Law of Mongolia on Non-Governmental Organizations stipulates that in the event a non-governmental organization does not fulfill the requirements of law, then the registering body shall provide a written official response refusing to register a non-governmental organization and state the grounds of such refusal.

3.2.5. There should be no extraneous requirements for registration, such as a minimum endowment requirement for an association or other membership organization or a burdensome minimum membership requirement. Minimum endowment requirements for grant-making organizations should be modest.

There is no any legal instrument, which provides that the registering body, i.e. the Ministry of Justice and Home Affairs or a district tax authority in the process of creation and registration of a non-governmental organization should impose extraneous requirements of minimum membership or minimum endowment. The registering body does not either impose extraneous requirements in any manner. However, for the registration of a political party with the public registry, there is a requirement to attach to the application the registration list of 801 members and information on funds. /The Law of Mongolia on Political Parties, Article 5/.

3.2.6. The permitted purposes stated in the law for formal civic organizations should be broadly inclusive.

The objectives in the charter of a non-governmental organization must be directed towards the preservation of a national security and public safety, respectful obedience to law, protection of public health, morale as well as rights and freedoms of others. The government support of these objectives and prohibition on unlawful limitation on them are reflected in the relevant provisions of the International Covenant on Civil and Political Rights and in the Constitution of Mongolia. The possibility of broadness of objectives of a non-governmental organization can be inferred from the definition of a public benefit non-governmental organization. A public benefit non-governmental organization is a non-governmental organization, which conducts activities in the areas of culture, arts, education, science, health, sports, environment, ecological development, protection of human rights and interests of a specific class or a group of the population and charitable activities for public benefit. /The Law of Mongolia on Non-Governmental Organizations, Article 4, para.2/. A non-governmental organization may be created on the basis of provisions of the law or the specific law after defining its objectives and the object towards which its activities are directed. For instance, the Law on the Legal

Status of Mongolian Red Cross Society was adopted in the year of 2000 with the purpose to define the legal status of Mongolian Red Cross Society and to regulate the issues related to the society's organizational structure, authority, its guarantees and support from the government. Moreover, on the basis of the Law on Cooperative Society /1998/ Chapter 5, a non-governmental organization called the Union of Cooperative Societies was established and is still in action. The Union has the objective to audit the activities of cooperative societies for determining their conformity with the objectives and the legislation and the issues related to organizational structure, finances and logistics of cooperative societies as well as to generally coordinate them.

3.2.7. Civic organizations should be allowed to have perpetual existence (or limited existence, if chosen by the founders).

There is no specific provision concerning the duration of the activities of the domestic and foreign non-governmental organizations and its representative offices. However, according to the "Procedure on Granting Permits for Opening and Operation of a Representative Office of a Foreign and International Non-Governmental Organization" adopted by the decree N°72 of the Minister of Justice and Home Affairs in 2000, in case of registration of a representative office, the registration number shall be given and the permit shall be issued for the period of up to 3 years, and for each request to continue the operation of a representative office, a permit may be prolonged for up to 2 years period consecutively.

3.2.8. Both natural and juridical Mongolian or foreign persons should be entitled to create civic organizations. Consideration should be given to allowing minors to participate as members in civic organizations.

A foreign citizen on the territory of Mongolia shall equally with the citizens of Mongolia enjoy the rights and freedoms afforded to him/her by the legislation of this country and bear the duties. /The Law of Mongolia on the Legal Status of Foreign Citizens, Article 8, para.2/. "A foreign citizen residing in Mongolia for the period of more than 90 days working for representative office of a foreign non-governmental or an international organization shall be considered as a resident on official duty. /Id. Article 22, para.3/. Foreign citizens and stateless persons lawfully and permanently residing on the territory of Mongolia may create a non-governmental organization or join a non-governmental organization according to the procedure stated in this law unless otherwise stated in the law or the international treaty of Mongolia. /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.6/. This law equally pertains to international and other countries' non-governmental organizations, their branches and representative offices created and operating on the territory of Mongolia. /Id. Article 3, para.2/.

The provisions of law mentioned above guarantee the right of foreign citizens and legal entities to lawfully create a non-governmental organization or associate with it on the territory of Mongolia.

Moreover, the law of Mongolia guarantees the freedom of association of minors. In particular, Paragraph 2 of Article 8 called "The Right of Children to Participate in the Life of Community" of the Law of Mongolia on the Protection of Children's Rights defines that "Children have a freedom of voluntary association to a non-governmental organization, peaceful assembly and freedom of expression."

On the other hand, provision of Article 12 of the Civil Code of Mongolia titled "Announcing a Minor to Have a Full Civil Law Capacity" and the Convention on Minimum Age of Children for the Industrial Hire renewed in 1937 and to which Mongolia acceded to and ratified in 1967 states that minors who reached the age of 15 may be hired to work at the industrial factories and their branches. /Convention, Article 2, para.1/. In addition, Paragraph 2 of Article 109 titled "Labor of Minors" of the Labor Law of Mongolia stipulates that a minor who reached the age of 15 may enter into an employment contract and work with the permission of his/her father, mother or guardian. In view of the above-mentioned provisions, it is possible for a minor to be employed, and join a non-governmental organization other than children's voluntary organization in order to protect their interests. Precisely, according to Article 2 of the Convention on the Protection of Freedom of Association and Right of Creation of an Organization, an employed minor has a right to create and

join an organization. Therefore, these rights and freedoms of a minor should be clearly stated in the Law of Mongolia on Non-Governmental Organizations.

3.2.9. Individuals should be allowed to create a foundation by testamentary act (e.g., by will).

The property and rights of a Testator shall be inherited according to the law or a will. /The Civil Code of Mongolia, Article 398/. Paragraph 5 of Article 410 of the same law states that a Testator of the property and other rights shall specify their purpose to individuals, legal entities and the state and the will executor in the execution of the will has a duty to take all the necessary measures, execute it and to redeem from the probate estate the expenses necessarily incurred for the administration and preservation of the probate estate. However, there is no specific provision on this issue in the Law on Non-Governmental Organizations. Despite this there are not few non-governmental organizations and foundations established by will or for the purpose of commemoration of famous people. For example, the family and the students of a well-known composer Ts.Damdinsuren created “Ts.Damdinsuren Foundation” on 3 October 1997 with the purpose to support composers, to commemorate him and to study his works. “Erdenebayer Foundation” was also founded by his family in 1999 with the purpose to give assistance to children and student youth who possess a high intellectual potential, but with limited opportunities to gain knowledge and education.

3.2.10. Both mutual benefit and public benefit organizations should be allowed to exist.

Article 4 of the Law of Mongolia on Non-Governmental Organizations distinguishes between the two types of a non-governmental organization, which are a public benefit NGO and a member benefit NGO. Although there is no enormous difference between the organizations representing the interests of their members and the organizations representing the interests of the public, there is a significant difference on the issue of support of such organizations from the side of the government.

3.2.11. As a general matter, membership in a membership organization should be voluntary; no person should be required to join or continue to belong to an organization.

Currently in Mongolia, there are more than 1,800 non-governmental organizations registered. Approximately 200 of them are the member benefit organizations with the purpose to protect the interests of their members and which involve the range of activities of legal entities and related to the individuals’ profession and occupation such as a non-governmental organization of pharmacists, persons engaged in the business of leather industry, telecommunication professionals, composers, book publishers, urologists etc. Article 4 of the Non-Governmental Organization, which states that “A non-governmental organization is a not-for-profit organization created on a voluntary basis, which conducts its activities independent of the government and according to the principles of self-governance” proves that a membership in a non-governmental organization is voluntary and no person may be compelled to join. It is prohibited by Article 5 titled “The Right to Create and Participate in a Non-Governmental Organization” of the same law to compel a person to join or limit the rights and freedoms, or discriminate as retaliation for joining a non-governmental organization.

3.3. THE ORGAN OF THE STATE RESPONSIBLE FOR REGISTRATION

3.3.1. The organ of the state that is vested with the responsibility for registering civic organizations should be adequately staffed with competent professionals and be even-handed in fulfilling its role.

The organ of the state, its administrative officer regulating the issue is in charge of registration of a non-governmental organization. The 1997 Law of Mongolia on Public Service specifically provides the prerequisites for the office of a state administrative officer and requirements for public servants.

According to Paragraph 4 of Article 20 of the Law on the Government of Mongolia, the competence of communication with non-governmental organizations is vested in the Minister of Justice and Home Affairs. Furthermore, the “Strategic Planning and Reorganization Program” was adopted by 1997 Government resolution N° 157. The Program set the standard that requires officers to deal with all the issues in the competence of the Minister in a professional manner, which equally pertains to an officer in charge of registration of non-governmental organizations.

The registration of domestic non-governmental organizations is administered by the Ministry of Justice and Home Affairs Department of Information and Monitoring officer in charge of the issue. The Foreign Citizens Council of the Ministry of Justice and Home Affairs is in charge of registering foreign and international non-governmental organizations. The duties and obligations of this Council are set forth in the 1993 Law of Mongolia on the Legal Status of Foreign Citizens.

In case a non-governmental organization is registered with the Public Registry the content of a certificate shall include the state registration number, registration number, date of issuance, the name of a non-governmental organization and the name of an individual, legal entity which submitted the application. The upper left corner of a certificate shall be stamped by the seal determining the type of a non-governmental organization such as “Public Benefit Non-Governmental Organization” and “Member Benefit Non-Governmental Organization.” The certificate shall be certified by and printed with the seal of the Ministry of Justice and Home Affairs.

3.3.2. Where it is thought appropriate to establish a separate governmental entity to determine whether an organization qualifies for public benefit or charitable status, such an entity should be an independent, mixed commission, similar to the Charity Commission of England and Wales.

The law is silent on the creation of an independent governmental entity to determine the status of a non-governmental organization.

3.4. REORGANIZATION AND REGISTRATION

A civic organization should be allowed to amend provisions in its statute without having to entirely re-register the organization. When there are changes in significant matters (e.g., the address of the organization, the names of general representatives, etc.), the organizations should be obliged to inform the registering authority by amending its statute. Changes in purposes or activities should also be easily permitted, with the exception of altering the fundamental purposes of the organization so that it becomes a for-profit entity.

The Governing Board of a non-governmental organization has a full authority to make amendments and additions to the charter. Article 17 of the Law on Non-Governmental Organizations titled “Registration of Amendments to the Charter” stipulates that if a non-governmental organization amends its charter, it shall notify the Ministry of Justice and Home Affairs within 30 days of such amendments. It also states that the Ministry shall give an official response either that it registered the amendments or if refused to register the grounds of such refusal within 30 days. If a non-governmental organization challenges the decision of the Ministry of Justice and Home Affairs refusing to register its amendments to the charter, it may bring a lawsuit in the court.

3.5. AMENDMENT IN THE EVENT OF IMPOSSIBILITY OR DEADLOCK

There should be procedures for amending the statute of an organization even if the organization cannot do so by its own independent action.

There is no specific provision defining the issue in the legislation and other legal acts of Mongolia.

3.6. PUBLIC REGISTRY

There should be a single, national registry of all civic organizations that is accessible to the public (in addition to any local public registries that may exist), whether or not civic organizations are registered in one or many locations.

The Ministry of Justice and Home Affairs shall register a non-governmental organization according to the procedures mentioned in the law. /The Law of Mongolia on Non-Governmental Organizations, Article 15/. This registering body has a legal duty to make public the registration of a non-governmental organization with the Public Registry. /Id. Article 16, para.11/.

To some extent financial burdens impede the exercise of such duty. The 1998 Law of Mongolia on Freedom of Press prohibited the governmental bodies to have in its discretion the means of mass media. As a result, two state newspaper publishing companies were privatized. This incident limited the chances of a governmental body to make public the news and information related to each level of its organization and raised the need to reflect the expenses related to it in the budget of a governmental body.

The Ministry of Justice and Home Affairs keeps a unified national record which includes the number of registration of a non-governmental organization with the Public Registry, the name and the objective of an organization, the date of creation, names and addresses of the management, and the address of location of a non-governmental organization. Due to limited financial and technological resources, this information is accessible only through the database of the local network of the Ministry of Justice and Home Affairs. The activity of a non-governmental organization is open to the public and its members or any individual may inspect the reports of a particular organization. /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.5/.

3.7. MERGERS AND DIVISIONS

There should be clear rules allowing, but not compelling, civic organizations to merge, divide, or modify themselves in ways that are permitted for other legal entities. However, there may be restrictions on the ability of civic organizations to merge with for-profit entities and still retain the benefits of civic organization status.

A non-governmental organization may make a decision on its discretion by the meeting of members or its Governing Board concerning the merger and division.

Article 29 of the Civil Code has a provision empowering the reorganization /merger, consolidation, division, separation, modification/ of a legal entity by the decision of shareholders of a legal entity or its authorized body, or of the body authorized to do so by the articles of incorporation. As per a non-governmental organization, its Governing Board has a competence of reorganization. /The Law of Mongolia on Non-Governmental Organizations, Article 11, para.2/. In case of such a merger or division of a non-governmental organization, or consolidation with another governmental organization, its rights and duties shall transfer to the resulting non-governmental organization so merged, divided or consolidated.

According to the law, the Governing Board comprises of no less than 5 staggered members /Id. Article 11, para.3/ and any issue is decided by the majority vote cast by the members on equal right.

3.8. TERMINATION AND LIQUIDATION

The highest governing body of a civic organization, upon application, should be permitted to terminate the organization's activities voluntarily and liquidate its assets pursuant to the decision of a court. The supervising organ or court should be allowed to terminate, freeze assets, or take control of a civic organization only for the most flagrant of violations, and generally only after a failure to correct a legal or ethical violation.

According to the Civil Code of Mongolia a legal entity shall be dissolved on the following grounds as such: a/ the decision of an owner or its authorized body, or the body authorized by the articles of incorporation is made; b/declared bankrupt, or the court decision to dissolve grounded on the repetitive or serious violation of law is made; c/ the term for operation has elapsed or its own decision that it has completed the purpose of its creation and there is no necessity to further continue its operation.

The above-mentioned grounds of dissolution of a non-governmental organization and its removal from the registry has been more clarified by Articles 7, 8, 18 of the Law on Non-Governmental Organizations and by certain provisions of the decree N°50, 72 of the Minister of Justice and Home Affairs.

According to the law, a competence to a voluntary dissolution of a non-governmental organization shall be vested in the governing board and it shall make such a decision public within 21 days and notify in writing the Ministry of Justice and Internal Affairs upon which a non-governmental organization shall be removed from the public registry. For example, within the last 2 years, 7 non-governmental organizations including “Cycle-Measurement Center” founded in 1997 and purposed to provide professional consultation on the measurement and metrication of heating and electric energy as well as drinking water; “For Children-Flower Foundation” founded in 1998 and purposed to protect children living in harsh conditions and provide them with social care have been dissolved on a voluntary decision of their governing boards and removed from the public registry.

Conversely, the court shall involuntarily dissolve a non-governmental organization if it conducted the activities not in conformity with its bylaws, or repetitively and seriously violated the law. For instance, the non-governmental organization named “Mongolian Unified Movement” was founded in 1997 and created with the purpose of strengthening the delivery of public service to the community and guaranteeing the equal rights of citizens. It repetitively and unlawfully organized meetings, misled the public by untruthful information, engaged in the libelous and defamatory conduct and refused to comply with the lawful requirements of the Ministry of Justice and Home Affairs. For the stated reasons it was dissolved on 20 July 1998 by the decision of the court. The non-governmental organization named “New Idea” and founded in 2000 has violated the law on a repetitive basis and for that reason the Ministry of Justice and Home Affairs made a case against it and its pending the decision of the court. A non-governmental organization that is dissolved, for the purpose of being removed from the public registry, has a duty to submit to the Ministry of Justice and Home Affairs a decision of such dissolution along with the official letter of an appropriate body certifying the closing of a bank account and seizure of a seal. The property of a non-governmental organization /foundation/ of both voluntarily and involuntarily dissolved after satisfying the debts and liabilities owed to private individuals and other legal entities shall be transferred to a non-governmental organization /foundation/ with the same or similar purpose and if there is no such organization it shall be disbursed to the activities in conformity with its purpose. /The Law of Mongolia on Non-Governmental Organizations, Article 7, para.2; Article 25, para.3/.

CHAPTER 4

STRUCTURE AND GOVERNANCE

The internal governance rules for non-governmental organizations are divided into four different types on the basis of the character of its norms.

- 1/ those that are required by law;
- 2/ those that are required by umbrella organizations;
- 3/ as a result of contractual arrangements, those that are required by donors and other supporters;
- 4/ those that are discretionary for the organization.

This chapter distinguishes between the mandatory rules required by law and those that are purely discretionary for the internal rules. Other mandatory aspects of internal reporting and supervision are considered in section 2 of Chapter 8. It discusses the legal requirement that the internal organs of a non-governmental organization have responsibility for oversight of the activities and finances of the organization.

An important aspect of the formal civic sector is its ability to police its own activities adequately by voluntary measures of self-restraint and supervision. Strong internal accountability requirements, clear governance structures, and transparency of operations in its dealings with the public are the principal means by which the civic sector develops and maintains the public trust. Paragraph 5 of Article 5 of the Law of Mongolia on Non-Governmental Organizations /hereinafter referred to as “Law on Non-Governmental Organizations”/ states that “The activities of a non-governmental organization shall be open to the public and its members and any other private individual may inspect its reports.”

4.1. MANDATORY PROVISIONS FOR ORGANIZATIONAL DOCUMENTS

The laws governing formal civic organizations should require that certain minimum provisions necessary to the operation and governance of the organization be stated in the statute of a civic organization. The requirements may be different for membership and non-membership organizations, with the latter often required to have additional governing organs because they are not accountable to members.

The statute of a non-governmental organization should be required to include clauses pertaining to the procedures of regulating certain essential matters necessary for its normal operation.

Article 10 titled “Charter of A Non-Governmental Organization” of the Law on Non-Governmental Organizations enlists the mandatory provisions to be included in the charter:

“The charter of a non-governmental organization shall include the following:

- 1/ name and address of a non-governmental organization;
- 2/ date of creation of a non-governmental organization;
- 3/ statement of purpose of a non-governmental organization;
- 4/ organizational structure and monitoring procedures of a non-governmental organization;
- 5/ powers of the Governing Board;
- 6/ maximum and minimum number of members of the Governing Board;
- 7/ terms of office and procedures for selection and removal of the Governing Board members;
- 8/ quorum necessary to hold a meeting of the Governing Board;
- 9/ decision making procedure at the meetings of the Governing Board;
- 10/ grounds and procedures for restructuring and dissolution of the non-governmental organization and liquidation of its assets;
- 11/ grounds and procedures for making amendments to a charter of a non-governmental organization.

The mandatory provisions that should be included in the charter in defining an organizational structure and monitoring procedures of a non-governmental organization mentioned in this Article are described in detail. Article 11 of the Law on Non-Governmental Organizations titled “The Governing Body of A Non-Governmental Organization” defines the forms, organizational structure of governing bodies of a non-governmental organization /the Governing Board/ as well as their basic rights and

duties. For instance, paragraph 1 of Article 11 of the Law on Non-Governmental Organizations states that “The governing body of a non-membership non-governmental organization shall be the Governing Board.” This provision has a mandatory character and means that in case of creation of a non-membership non-governmental organization, its governing body must necessarily be the Governing Board. However, the provision which states that “The governing body of a membership non-governmental organization shall be a Governing Board as specified in paragraph 1 of this Article if the non-governmental organization’s bylaws do not provide otherwise” has an optional or default character. In other words, in case of creation of a membership non-governmental organization, the founders have discretion to choose any other form of a governing body and state it in the bylaws and if the choice is not made the mandatory provision that it be a Governing Board shall be triggered.

Similarly, the mandatory provisions to be included in the charter of a non-governmental organization related to the powers of the Governing Board are stated in the law. According to Paragraph 1 of Article 11 of the Law on Non-Governmental Organizations, the Governing Board has the following powers:

- 1/ to make amendments to bylaws;
- 2/ to restructure and dissolve a non-governmental organization;
- 3/ to approve the annual budget of a non-governmental organization;
- 4/ to hire and discharge the Executive Director and to discuss his/her report;
- 5/ to define the authority of the Executive Director over the finances and assets of a non-governmental organization;
- 6/ to approve the organization, structure and budget of a support staffing of a non-governmental organization.

A non-governmental organization may enjoy certain tax benefits and raise donation moneys in order to implement its purpose. With regard to this, a non-governmental organization is mandated with a duty to include the provisions that limit the powers of the Governing Board. According to Article 20 of the Law on Non-Governmental Organizations:

“1. A non-governmental organization shall disburse its income only for the attainment of purposes stated in its charter.

2. A non-governmental organization is prohibited to distribute its incomes in the form of a dividend, to act as a surety or a guarantor to private individuals, business entities and other organizations.

3. No member of the Governing Board or staff of a non-governmental organization shall conduct any financial or economic activity using the assets and finances of a non-governmental organization for his/her personal gain.

4. A non-governmental organization is prohibited to make any contributions to political parties and/or to coalition, candidates in the State Ih Hural, Presidential and Citizen Representatives’ Hural elections.”

If to disregard a general statement of the Law on Non-Governmental Organizations on the mandatory inclusion of a provision on “an organizational structure and monitoring procedures of a non-governmental organization,” the law does not specify in detail the methods of monitoring such as should it be monitoring council or audit, and if it is set up may there be a dual membership etc. This means that a non-governmental organization would itself voluntarily define its monitoring procedures.

Furthermore, for a membership non-governmental organization it is necessary to specifically include in its charter the procedures of obtaining the membership, the requirements for members, the member rights and duties as well as grounds for discharging from membership. It is appropriate to define by the law the general boundaries of the issues to be regulated by the bylaws. The reason is that there must be a mechanism for members to protect their legitimate rights and not to arbitrarily violate the rights of members who voluntarily joined a non-governmental organization. With regard to it, no specific provision is provided in the Law on Non-Governmental Organizations.

4.2. OPTIONAL PROVISIONS FOR ORGANIZATIONAL DOCUMENTS

Laws governing formal civic organizations should give a formal civic organization (through its founders or its highest governing body) broad

discretion to set and change the governance structure and operations of the organization within the limits provided by the law.

When a non-governmental organization grows over time and expands its operations, there arises a necessity to make amendments to a charter on non-essential but vital for its operation matters. If faced with such a necessity, there must be a flexible law providing a non-governmental organization with an opportunity to settle such matters in a voluntary manner. For instance, for creation of a finance committee it should not be necessary to amend the statute. The highest governing body of a non-governmental organization should be allowed consistent with the terms of the law and its statute, to adopt rules, regulations or resolutions that govern the details of operation.

According to Article 11 of the Law on Non-Governmental Organizations the highest governing body of a non-governmental organization has a full authority to make amendments to its bylaws, reorganize or dissolve a non-governmental organization. Within the limits of the authority vested in it by the law, the highest governing body of a non-governmental organization may make decisions on any issue related to the operation of a non-governmental organization.

4.3. LIABILITIES OF OFFICERS, BOARD MEMBERS, AND EMPLOYEES

4.3.1. Laws governing formal civic organizations should provide that officers, members of the governing board and the supervisory board (if one is required), and managerial and other employees of a civic organization should not be personally liable for the obligations of the civic organization.

Officers, board members and other employees of a non-governmental organization are not liable in their individual capacity for the debts, liabilities, or other obligations incurred by the activities of a non-governmental organization. However, they may become liable by private contract concluded on their own behalf. For example, when a board member guarantees a loan incurred by a non-governmental organization, he/she may become liable. According to Article 6 of the Law on Non-Governmental Organizations a non-governmental organization shall enjoy the status of a juridical person upon its registration with the public registry. According to Paragraph 2 of the Civil Code Article 27 titled “Liabilities of A Juridical Person” “Unless otherwise provided in the law or the founding instruments the founders of a juridical person or owners of its property shall not be liable for the debts and liabilities of a juridical person and a juridical person shall not be liable for the debts and liabilities of its owners or founders.” This provision of the Civil Code equally applies to non-governmental organizations with the status of a juridical person as it applies to other legal entities.

4.3.2. Officers and board members should ensure that the organization operates within the requirements of the law (e.g., Civil Code, the Labor Code, and other general laws) and should be liable to the organization and/or to injured third parties for willful or grossly negligent performance or neglect of their duties.

A non-governmental organization has a primary responsibility for its own acts. However, the officers and board members bear responsibility for the acts of a non-governmental organization if they act in a willful or grossly negligent manner in their oversight of the organization. The officers and board members should not be liable if they act properly and in good faith in overseeing the activities of a non-governmental organization.

According to paragraph 5 of Article 12 of the Law on Non-Governmental Organizations “A non-governmental organization shall not be liable for losses and damages caused to private individuals, business entities and other organizations by the illegal acts of its members, members of the governing board and officers.” Moreover, the Civil Code of Mongolia has a specific proviso in Article 378 related to “Tort Liability of Juridical Persons to Others.” Paragraph 1 of this Article prescribes that “A juridical person shall be liable for the torts of its employee if he/she committed it during the exercise of his/her duties under the employment contract.”

If an improper act or omission of an officer or board member injures a third party, it is appropriate to legalize that person's entitlement to sue a non-governmental organization in the court. If a non-governmental organization is required to pay damages, it must have a right to sue the officers or board members for dereliction of duty. It is allowed to try the claim mentioned above in the same suit. Furthermore, to prevent an injured third party from being without remedy if the civic organization has been terminated or becomes bankrupt, a third party should have the right to sue the offending officers or board members directly.

4.4. DUTIES OF LOYALTY, DILIGENCE AND CONFIDENTIALITY

4.4.1. The law should provide that officers and board members of a civic organization have a duty to exercise loyalty to the organization, to execute their responsibilities to the organization with care and diligence, and to maintain the confidentiality of non-public information about the organization.

These duties are the same as for the officers of other legal entities and are regulated by the general principles of the Employment Law of Mongolia governing employer-employee relations. According to Employment Law of Mongolia Article 6 titled "Employee Rights and Duties," "An employee has a duty to discharge his/her duties with integrity and to keep confidential all the confidential information defined as such by law related to his/her duties and obligations."

In addition, the Law on Secrets of Organizations adopted in 1995 defines that "the secret of an organization shall mean the information, documents and physical objects determined as confidential in order to protect the rights and reputation of individuals and legitimate interests of a specific organization." It also prescribes that the secrets of an organization shall be under its own protection and an organization shall adopt the internal regulation according to the law to protect its secrets.

Moreover, for ensuring the national security of Mongolia, the secrets of a non-governmental organization may be included in the classification of the state secrets according to the relevant procedures. /the Law of Mongolia on State Secrets, 1995, Article 22/.

According to the Law on Secrets of Persons adopted in 1995 "the secret of a person shall mean the information, documents and physical objects that are made confidential according to the law of Mongolia by Mongolian and foreign citizens as well as stateless persons disclosure of which would be defamatory on its face to the reputation and legitimate rights of a person." The law also enacted the classification of such secrets such as secrets related to correspondence, health, property and spouses. It also prohibits persons who gained confidential information of persons according to the law or while acting as their fiduciary to disclose such information.

4.4.2. The civic organization itself, or any affected person in the society, should be allowed to sue for redress of any violations of these duties.

According to paragraph 12 of Article 16 of the Constitution of Mongolia Chapter 2 titled "Human Rights and Freedoms" individuals are entitled to make a petition to the state organs and officers of Mongolia and the state organs and officers have a duty to decide according to the law on the petition made by individuals. In case the state organs and officers neglect their duties to decide upon the petitions submitted, the individuals may bring a suit in the court. According to paragraph 14 of the same Article they "are entitled to sue and recover damages unlawfully caused by others in order to protect their rights if they consider that their rights guaranteed by the law or international treaties of Mongolia are violated."

Besides the fact that a non-governmental organization has a right to sue to protect its interests, in some countries the public prosecutor or state attorney has the right to bring civil actions on behalf of a non-governmental organization. This system is the most suitable when the non-governmental organizations are small, weak and unable to cover the expenses of bringing lawsuits. Mongolia does not have a specific arrangement in its law on the issue.

A lawsuit may only be brought by someone who has the right to bring such a lawsuit. This right is determined by the degree of the person's interest in the outcome of a case. According to the Law on

State Secrets, Law on Secrets of Organization and Law on the Secrets of Persons, if the criminal sanction should not be imposed on the person who violated these laws, the judge imposes the monetary penalty of certain amount as an administrative sanction.

If the court finds meritorious a claim of a non-governmental organization alleging that an enormous damage was caused to its legitimate interests and the economic status due to the serious violation of non-disclosure procedures of the secrets of an organization by managing and executive officers of a non-governmental organization, the court may impose on them sanctions indicated in the Article 192 /abuse of the official position and powers/ and Article 193 /exceeding the official powers and authorities/ of Chapter 8 titled “White Collar Crimes” of the special part of the 1986 Criminal Code of Mongolia. In case the violation of Law on the Secrets of Persons does not demand the imposition of a criminal liability, the court may impose the sanctions indicated in Article 146 /Violation of the Personal Correspondence Confidentiality Immunity / and Article 146 (1) /Disclosure of Personal and Spousal Confidentiality of Persons/ of Chapter 4 titled “Offenses Against Political and Other Rights and Freedoms of Persons” of the special part of the Criminal Code.

4.5. PROHIBITION OF CONFLICT OF INTEREST

4.5.1. Careful consideration should be given to whether and to what extent the law should provide that officers, board members, and employees of a formal civic organization must avoid any actual or potential conflict between their personal or business interests and the interests of the formal civic organization.

Because of the many differences in the structures and activities of non-governmental organizations and because of the innumerable ways that individuals may involved with a non-governmental, it can be said that it is nearly impossible to stipulate with specificity the kinds of conflict of interest that should be avoided. One possible approach is to prohibit conflict of interest in general terms. Non-governmental organizations could also be required to adopt specific internal conflict of interest rules.

In some legal systems the obligation to avoid or correct a conflict of interest is an established doctrine of law that has general application to anyone in a fiduciary relationship. In this case, no special rules are required for civic organizations.

The Law of Mongolia on Non-Governmental Organizations has detailed procedures that govern the conflict of interest issues.

4.5.2. Potential conflicts may be knowingly waived.

It is necessary to oblige an officer to notify in writing any actual or potential conflict of interest. Alternatively, the organization may have a right choose to excuse a person with a conflict of interest from the discussion of relevant issues. For instance, if the member of the board of a non-governmental organization is also an officer of a local bank, he/she will have a duty to recuse him/herself from any decisions by a non-governmental organization about where it should obtain a loan.

According to paragraph 3 of the Law on Non-Governmental Organizations Article 13 titled “Decision Making Procedure of the Governing Board” “if an issue examined by the Governing Board results in a conflict of interest for any member present at the meeting, such member shall disclose the conflict and refrain from voting on the issue. If the conflict of interest involves the Chairperson of the Governing Board, another member shall conduct the meeting.”

4.5.3. A civic organization should be entitled to sue its officers, board members, or employees for redress of any harm caused by a conflict of interest.

Paragraph 1 of Article 132 of the Employment Law of Mongolia, which states that “the employee despite whether he/she was imposed a disciplinary, administrative or criminal sanction will be held civilly liable if he/she, while discharging his/her employee duties, caused damages to the property of an organization by his/her own wrongful conduct” is applicable to the issue.

CHAPTER 5

PROHIBITION ON DIRECT OR INDIRECT PRIVATE BENEFIT

5.1. PROHIBITION ON THE DISTRIBUTION OF PROFITS

Laws governing formal civic organizations should provide that no profits of a formal civic organization may be distributed as such to any person.

A non-governmental organization must disburse its profits only for the implementation of the purpose indicated in its charter and it is prohibited by law to distribute incomes in the form of a dividend. /The Law of Mongolia on Non-Governmental Organizations, Article 20, para.1, 2/. One form of exercising control over whether a non-governmental organization possesses, utilizes and disposes of its profits lawfully is the accounting of financial statements and activity reports of this organization before the relevant audit or registration bodies. (See detailed discussion in Chapter 8).

Although there are many non-governmental organizations in Mongolia nowadays conducting its activities according to the law, there are a few non-governmental organizations violating the law. For example, the scandalous non-governmental organization named “New Idea Center” when first registered with the Ministry of Justice and Home Affairs in 1999. The investigation of this organization based on the information obtained from individuals’ petitions revealed that it conducted the activities not in conformity with the purpose indicated in its charter. Under the shield of the certificate of a non-governmental organization it conducted banking and financial operations as well as for the purpose of income generation created a “chain relationship” which required the membership fee in the amount of 800 US Dollars and if a member joined in such a manner brought a number of new members, he/she would share in the “tax fees” so accumulated. In other words, this fraudulent event of unlawful distribution of dividends from profits earned by unlawful operations had caused many individuals enormous damages. At that time, the Ministry of Justice and Home Affairs had terminated the activities of this organization and the case was brought before the court. Even until the present day it has not finished yet to fully satisfy the claims of plaintiffs. This organization conducted activities in violation of a number of laws of Mongolia such as the Law on Non-Governmental Organizations, the Law on Commercial Banks, the Law on Currency Regulation, Tax Law, the Law on Auditing etc.

5.2. PRIVATE INUREMENT

5.2.1. The laws governing formal civic organizations should not prohibit officers, board members, or employees from being paid appropriate compensation for work actually performed for the organization, including appropriate fringe benefits and reimbursement for appropriate expenses.

The provision of Article 7 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966 and to which Mongolia acceded to in 1974, recognizing the right of employees to the enjoyment of just and favorable conditions and fair is reflected in the Constitution of Mongolia. /The Constitution of Mongolia, Article 16, para.4/.

The Executive Director and Officer of a non-governmental organization must conclude the employment contract with the employer in accordance with the appropriate law and the major condition of this contract is to agree upon the amount of remuneration. /The Employment Law of Mongolia, 1999, Article 21, para.1, 3/. The remuneration comprises of the base salary, additional fees and the bonus. /Id. Article 47/.

It is required to provide fair wages and equal remuneration for work of equal value equated by hours and by other methods while women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. /Id. Article 49/.

According to paragraph 3 of Article 12 of the Law on Non-Governmental Organizations the salary and the bonus of the Executive Director of a non-governmental organization is determined by the employment contract.

According to the Law on Non-Governmental Organizations, the Governing Board of a non-governmental organization adopts the office personnel budget. However, the members of the Governing Board and other members of a non-governmental organization participate in the day-to-day operations of an organization not on the regular basis. Therefore, they participate in the operations of an organization on the voluntary basis without obtaining any salary or bonus.

According to the Law on Non-Governmental Organizations, a member of the Governing Board has no right to obtain any salary or bonus other than the reimbursement of the expenses incurred during discharge of his/her duties. /The Law on Non-Governmental Organizations, Article 11, para.4/.

As mentioned before, there are about 1800 officially registered non-governmental organizations in Mongolia. They provide numbers of individuals with employment and it is necessary to well-define their employment relationships. Generally, it is proper to add special provisions to the Law on Non-Governmental Organizations on the monetary compensation and benefits of the managing and other officers as well as other individuals participating in the operation of an organization.

5.2.2. The laws governing formal civic organizations should prohibit a civic organization from providing special personal benefits, directly or indirectly (e.g., scholarships for relatives), to any person connected with the organization (e.g., founder, officer, board member, employee, or donor). Benefits may be made available to member of an MBO if they are made available on a non-discriminatory basis to all members (e.g., special educational materials or life insurance plans).

There is no explicit provision in the Law on Non-Governmental Organizations about the benefits to be made available to the persons connected with a non-governmental organization and on a non-discriminatory basis to all members.

However, there is a provision in the Employment Law of Mongolia that guarantees one or a particular group of an organization such as minors, disabled, elderly, pregnant women and a person caring for infant favorable conditions suitable with such statuses. Moreover, the benefits are to be made available by the employer to persons simultaneously studying as well as to single mothers or fathers, large families and persons with disabled child for the purpose of improving their livelihood. /Id. Article 18/.

On the other hand, it is acceptable to provide in the internal instruments of an organization for the persons related to an organization such as founders, managing and executive officers and sponsors of a non-governmental organization the benefits such as the access to organization's information database, participation in the fee and no-fee social activities /training, cultural, arts and sports/ organized by an organization and discounted subscription for the organization's regular publications.

5.3. PROHIBITION ON SELF-DEALING

5.3.1. Laws governing formal civic organizations should provide that any transaction (e.g., sale, lease, or loan) between a civic organization and any person connected with it (e.g., founder, officer, board member, employee, or donor) must be consummated only after legitimate negotiation and for fair market value.

An organization may conduct commercial activities in order to ensure its normal operation. However, it is not allowed to undertake a transaction that constitutes an unreasonable benefit to an individual connected with a non-governmental organization to the detriment of the organization.

The assets of a non-governmental organization is exclusively the property of that organization only, but not of the persons and certain groups of people connected with it. Paragraph 3 of Article 20 of the Law on Non-Governmental Organizations prohibits members of the Governing Board and officers of a non-governmental organization to conduct any financial or commercial activities using the assets, financial resources, information database and the official information of the organization for their personal gain. Hence, the assets of a non-governmental organization are designated not to the interests of persons in some ways connected to the organization, but to the implementation of the purposes mentioned in the charter of the organization and to the management of its day-to-day operations.

Paragraph 5 of Article 12 of this law provides that a non-governmental organization shall not be held liable for the damages caused to the individuals and organizations as the result of unlawful activities of its founders and managing officers and that only the persons who were involved in the unlawful activities shall be held personally liable.

5.3.2 It may be appropriate to prohibit entirely certain kinds of potentially abusive transactions.

The Governing Board of a non-governmental organization defines the authority of the Executive Director related to the asset management of a non-governmental organization. /The Law on Non-Governmental Organizations, Article 11, Section 1, para.5/.

It is prohibited to abuse the powers of the office in the form of distributing the dividends from the profit earnings of a non-governmental organization, acting as a guarantor or surety for any person or organization, conducting any financial and commercial activities for personal gain and by making any contributions or donations to the candidates to the government office. /Id. Article 20, para.2, 3,4/.

Thus, if the criminal liability should not be imposed, an administrative sanction is imposed for the act of embezzling and conversion of the property of others by abusing the powers of the office, which caused minimal damage. /The Law of Mongolia on Administrative Sanctions, Article 36/. However, if the damages caused to the interests of an organization as the result of abuse of office powers for personal gain is not minimal, the criminal liability is imposed.

5.3.3. A civic organization should be entitled to sue for redress of any harm caused by self-dealing.

The agreement, which by its nature violates the law and does not conform to the interests of the society, is void for illegality. /The Civil Code of Mongolia, Article 43, para.1/. The court, on the petition of an interested party, may consider voidable the agreement willfully concluded by an agent of a legal entity on behalf of the principal to the detriment of the principal, by unauthorized person or by the person in excess of the authority given to him/her unless the principal ratifies it. /Id. Article 44, Section 1, para.3/.

A non-governmental organization is entitled to demand compensation for the damages caused to it as the result of unlawful acts of the managing officer and other persons related to a non-governmental organization from the party which caused the damages by initiating the court proceedings. /The Civil Code, Article 377, para1, 7/. Thus, the right of a non-governmental organization to the judicial redress of its violated rights by putting it into the position it would have been had the right never been violated is mentioned in paragraph 1 of Article 386 of the Civil Code.

In addition, it is specifically provided in the Law on Non-Governmental Organizations that if a party connected to the non-governmental organization had caused damages to that organization and the criminal liability should not be appropriate, an administrative sanction shall be imposed. However, it is prescribed that if a party connected to a non-governmental organization or its authorized agent for his/her personal gain or by abusing the powers of the office had caused damage to the assets of the organization, he/she shall be held criminally liable.

5.4. PROHIBITION ON THE REVERSION OF ASSETS

5.4.1. Laws governing formal civic organizations should provide that no civic organization should be permitted to distribute assets to its founders, officers, board members, employees, donors, or members upon its liquidation.

How to distribute the remaining assets or surplus in case of a dissolution of non-governmental organizations operating on the territory of Mongolia? First of all, it is appropriate to mention that the founders and promoters of a non-governmental organization do not retain the rights to the assets separated to a non-governmental organization. Furthermore, the founders of religious organizations and other foundations created with a different purpose do not retain the rights to assets separated. Therefore, upon the creation and commencement of operations of a non-governmental organization the assets contributed to it is separated and transferred to the ownership of a non-governmental organization. Even in the event of dissolution of a non-governmental organization, the property rights of its founders and promoters do not revive. It is necessary to indicate in the bylaws of the civic organizations and foundations that in the event of their dissolution the remaining assets are to be transferred to the organization with the same purpose, to be disbursed for the activities conforming to their purposes or to be transferred to organizations conducting their activities for the public benefit. /The Civil Code, Article 145, para.5/. If they do not so designate in the charter, the State escheats the remaining assets. If to carefully consider this provision, paragraph 2 Article 7, paragraph 2 of Article 8 and paragraph 3 of Article 25, they infer that it is prohibited to distribute the remaining assets of a non-governmental organization to persons connected with it in case of the dissolution of an organization. However, the asset distribution rules for for-profit organizations such as companies, partnerships and cooperatives in case of their dissolution are different from those of a non-governmental organization. The right of partnership members to revert their contributions upon the dissolution of a partnership is mentioned in 1995 Law on Partnerships Article 25 titled "Distribution of Assets."

5.4.2. An exception permitting distribution of assets to members upon termination and after payment of all liabilities of the civic organization may be appropriate in the case of an MBO that never received significant contributions from the public (i.e., persons not affiliated with it as founders, donors, officers, board members, employees, members, or donors) or significant grants, contracts, or tax benefits from the state.

There is no any provision in the laws of Mongolia related to non-governmental organizations on this issue. However, as mentioned below, in case of dissolution of a non-governmental organization the assets may be returned, but not distributed.

An owner may transfer his/her own rights to third parties and the third parties have a right to possess, use and administer the properties so transferred in accordance with the designation of an owner, the purposes of their own charter and activities. /The Civil Code, Article 75, para.3/. A person non-owner has a right to possess, use and administer the property, intellectual valuables and property rights in accordance with the nature of its activities within the limits of the authority defined by the law or by contract concluded with the owner. /The Civil Code, Article 88/. In case persons connected with a non-governmental organization /founders, managing and executive officers, supporters/, on the basis of a contract concluded according to the provision mentioned above, transfer temporarily and by the power of attorney their personal property to the ownership of a non-governmental organization, they may revert their property in case of a dissolution of an organization.

For example, the Union of Artists Committee has renewed its registration in 1997 and has the purpose to perfect the fine arts and to protect the interests of its members. This union has in its possession a building with a chamber where arts are exhibited and the workshops where the artists create their masterpieces. The members are given an opportunity, on the basis of the agreement with the Union of Artists Committee, to independently or in concert with others exhibit their masterpieces to the public as well as sell to sell their works.

In this case, a member-artist transfers his/her property of artwork to the Union of Arts Committee's possession, use and administration on the basis of an agreement. In case of the Committee's dissolution, the masterpieces exhibited may revert to the ownership of an owner who created it.

CHAPTER 6

ACTIVITIES OF CIVIC ORGANIZATIONS

6.1. PUBLIC BENEFIT ACTIVITIES

6.1.1. All civic organizations should be permitted to engage in public benefit or “charitable” activities.

Public benefit activities are defined in paragraph 2 of Article 4 of the Law on Non-Governmental Organizations. The charitable activities for the promotion of arts, culture and education, protection of nature and environment, support of human rights and community development are defined as the public benefit. A public benefit organization is defined as the one that makes the main purpose of its charter its engagement in public benefit or charitable activities. The vivid example of such an organization is the Red Cross Society. The independent law defining the status of this organization was adopted on 28 April 2000 by the State Ih Hural of Mongolia.

Even if the purpose to engage in the public benefit activities /for example, promoting education/ is not mentioned in the charter of a member benefit non-governmental organization, it may engage in such activities.

An example of a member benefit non-governmental organization is the Mongolian Union of Foodstuff Providers, which is registered with the renewed registry on 13 August 1997 and has a purpose to protect the interests of foodstuff producers and develop the food industry. This union frequently organizes campaigns with the purpose to propagate the relevant provisions of the Fundamental Principles of National Security, the Law on Foodstuffs, the Law on Protection of Consumer Interests, the Law on Sanitation and the Law on Health as well as to disseminate the information to the public by public media /newspaper, television and radio/ on the proper use of foodstuffs and public health.

A type of a non-membership non-governmental organization that operates and receives donation funds in order to conduct charitable, social, cultural and other public benefit activities is the foundation. /The Civil Code, Article 36, para.3/. For example, the Foundation for Support of Rural Women Progress was founded in September 1997 and its purpose is to refresh the motivation of women, strengthen their independence and to improve their social status.

Nowadays, from about 1800 non-governmental organizations registered in Mongolia 1600 have the purpose to operate for the public benefit.

6.1.2. Civic organization laws should allow organizations to qualify as PBOs (as opposed to MBOs) for the purpose of receiving special benefits from the state, such as special tax benefits or the right to compete for certain state contracts. Qualification may be accomplished through an application procedure to a specific state agency, such as the Department of Revenue, or a special commission set up specifically for that purpose.

The status of a non-governmental organization in Mongolia is defined on the basis of the purposes and prospectuses mentioned in its charter. The Ministry of Justice and Home Affairs, when registering a non-governmental organization, prints an impression on the certificate of a non-governmental organization distinguishing between the classes /status/ of non-governmental organizations. The laws of Mongolia do not make any determinations concerning the “preferential treatment” on the basis of the distinction between public benefit and member benefit organizations. Therefore, they have an equal treatment.

A non-governmental organization may obtain the right to contract with the government on the basis of competition not depending on whether or not it operates for the public benefit, but on the account of its purposes. For instance, through its government contract, the Center for Research of Politically Repressed is implementing the four-year /1997-2000/ research project titled “Motives of Political Repressions” with the financial assistance provided by the Scientific and Technological Foundation operating under the auspices of the Ministry of Education.

6.1.3. The regulatory burdens borne by formal civic organizations should be commensurate with the benefits they obtain from the state.

When a non-governmental organization conducts its public benefit not-for-profit activities in conformity with the purposes of the charter, the law guarantees its entitlements to certain benefits from the state. However, the benefits bring additional regulatory burdens which commensurate with them.

The activities of non-governmental organizations are regulated by the state in the following forms:

1. It defines the requirements for bylaws of a non-governmental organization. /The Law on Non-Governmental Organizations, Article 10/.
2. It requires that non-governmental organizations conduct the activities, which conform to the purposes indicated in their charter only. /Id. Article 8, para.1/.
3. It requires obtaining special permits for some activities. /The Civil Code, Article 22, para.3/.
4. It requires non-governmental organization to submit to the Tax Authorities and the Ministry of Justice and Home Affairs the report by 15 February of each year.

As an example, the Academy of Sciences is a non-governmental organization that has a purpose to promote the sciences and high technology. The legal status of this organization is defined by 1996 Law on the Legal Status of the Academy of Sciences. Although this is a non-governmental organization, it enjoys the support of the government. /Id. Article 2/. The Academy may open and operate a research institute, center or laboratory needed for the implementation of its own functions and purposes. /Id. Article 4/. It signs an agreement with the government on the execution of its duties and annually reports to the relevant Standing Committee of the State Ih Hural. /Id. Article 7, para. 2,3/. It can be concluded that, although the Academy of Sciences has an extensive authority and material resources, it bears the high supervisory burdens on its activities.

In addition, some laws provide for benefits in the operations of non-governmental organizations to be provided by the government and for opportunities to cooperate with the government. For example, “the proposals and initiatives of the citizens, business entities and voluntary organizations for the protection of the livestock genofund and health shall be supported.” /The Law of Mongolia on the Protection of Livestock Genofund and Health, 1993, Article 3/; “The professional non-governmental organizations and experts shall be involved in the formulation of educational standards.”/The Law on Education, 1995, Article 10, para.3/; “The central body on Weights and Measures shall have an interim council consisting of the representatives of relevant bodies of the state, voluntary organizations and business entities.” /The Law on Unification of Weights and Measures, 1994, Article 16, para.3/.

6.2. PUBLIC POLICY ACTIVITIES

6.2.1. Civic organizations are key participants in framing and debating issues of public policy, and just as with individuals, they should have the right to speak freely on all matters of public significance, including existing or proposed legislation, state actions, and policies. Likewise, civic organizations should have the right to criticize or endorse state officials and candidates for political office. There should not be any particular restrictions on the right of civic organizations to carry out public policy activities, such as education, research, advocacy, and the publication of position papers.

In the democratic society where the people govern, the people of Mongolia directly participate in the affairs of the state or through their elected representatives. A non-governmental organization is the association of group of people voluntarily joined together on the basis of their personal and societal interests as well as their opinions. The rights, duties and activities of non-governmental organizations of the period when Mongolia lived in a socialist system were limited and restricted. Since the adoption and declaration of the new Constitution in 1992, the non-governmental organizations started to zealously participate in the policies of the government and to launch their activities in all the aspects of political, social, economic and cultural life. Furthermore, on some occasions, they began to influence the activities undertaken by the state. The right of non-governmental organizations to

operate and participate in the policies of the government has been guaranteed by the Constitution and other legislation adopted in conformity with it.

The right of non-governmental organizations to participate in drafting and implementation of decisions to be taken by legislative and executive authorities and to make public statements on their positions on the decisions taken by the state are mentioned in Article 9 of the Law on Non-Governmental Organizations.

“The initiator of the bill before drafting it shall first define its fundamental principles. The working group in charge of bill drafting as well as legal entities and citizens may formulate the fundamental principles. In the process of drafting the bill, the opinions of relevant legal entities shall be obtained and considered.” /The Law on Drafting and Introducing Bills and Other Resolutions of the State Ih Hural, Article 9/. For example, on the basis of these provisions, in the discussion of 1996 Law of Mongolia on Children’s Rights and accession of Mongolia to the 1989 UN Convention on the Rights of Children, the non-governmental organizations with the purpose to protect children’s rights; in the discussion of the 1997 Law on Non-Governmental Organizations, the Mongolian Society for the Protection of Consumer Interests had respectively participated in the work of legislative drafting working groups created by the Government as well as obtained and consolidated the opinions of other non-governmental organizations on the law.

The elections of the State Ih Hural took place in Mongolia in July of the year 2000. The President of the Academy of Sciences was nominated to the candidacy and according to the election results, he was elected as the Member of the State Ih Hural. He publicly declared that he would hold the office of the President of the Academy of Sciences while performing the duties of the Parliament member. He based his declaration on the provision of paragraph 1 of Article 6 of the Law on the Legal Status of the State Ih Hural Members, which states that “A member of the State Ih Hural shall not hold a dual office except for the elected office in a non-governmental organization.” It seems acceptable, but according to the Law on Legal Status of the Academy of Sciences, the Academy reports annually to the relevant Standing Committee of the State Ih Hural, in which case it seems inappropriate to hold the dual offices where the reporting and supervisory duties are incompatible.

6.2.2. Formal civic organizations should be permitted to engage in public interest litigation.

Although there is no specific provision in the Law on Non-Governmental organizations regarding the right to bring a legal action in the court, the legal entities in order to protect the interests, the rights and freedoms of others may bring according to paragraph 1 of Article 29 of the Civil Procedure Law a legal action and participate in the proceedings of the court and according to Article 31, 52 of the Criminal Procedure Law the civil claim against the pertinent party in the court.

Particularly, the “Maral” Society for the Protection of Reindeers /registration N°1016296/ in concert with the Ministry of Environment Unit for the Protection of Nature and the Administration of the Bogdo Khan Mountain Reserve in 1999 revealed the group of illegal hunters of a number of reindeers of the Bogdo Khan Mountain and participated in the court proceedings against them in the capacity of the plaintiff.

6.2.3. Formal civic organizations are not political parties. It may be appropriate to limit them in activities such as fundraising to support candidates for public office or registering candidates to qualify for public office.

Paragraph 10 of Article 16 of the Constitution of Mongolia refers to “.... voluntary organizations and political parties...”; Article 17 of the 1996 Customs Law states that “the State Customs Inspector shall not simultaneously hold a full-time office in the local self-governing bodies, business entities, parties and voluntary organizations”; Article 7 of 1993 Law on the Government titled “The Powers of the Government” states that “the Government shall exercise control over the implementation of laws by parties, voluntary organizations and privately owned business entities within the authority

prescribed by law.” A number of laws provide as mentioned in the above provisions, the precise distinction between the non-governmental organizations and political parties.

According to paragraph 1 of Article 3 of the Law on Non-Governmental Organizations the special Law separate from this law defines the status of political parties. The Law of Mongolia on Political Parties adopted in 1990 is the major law that regulates the activities of parties. The definition of a non-governmental organization and a political party draws clearly the distinction between those two organizations.

A political party is the association of the group of people with the unified organizational structure, common opinions and interests, short and long-term objectives, the absolute motivation, strong discipline and aim to acquire the powers of the government and participate in its activities with the decision-making power. The Supreme Court of Mongolia registers the political parties. /The Law on Political Parties, Article 6, para.1/.

A political party is the major actor in the political system and plays an important role in the political life of the country. Currently, there are 24 political parties actively functioning in Mongolia. For instance, the Mongolian Social Democratic Party /MSDN/ founded on 2 March 1990 had an objective to strengthen the sovereignty and national security of Mongolia, ensure step by step development of the country and to build the democratic socialism in the country. This party had more than 50000 members and 19 seats in the State Ih Hural for the period of 1996-2000. The party united with the Mongolian Democratic Party on 6 December 2000.

A political party has a right to nominate its candidates to the State Ih Hural and, if it has a seat in the State Ih Hural, to nominate to the office of the President. /During 2000 State Ih Hural Elections 24 political parties nominated their candidates to the State Ih Hural and the Mongolian Peoples Revolutionary Party has taken 72 of 76 seats and other 4 seats have been acquired by members of other political parties/.

Article 20 of the Law on Non-Governmental Organizations has a provision that prohibits non-governmental organizations to make contributions to the candidates to the public office.

6.3. ECONOMIC ACTIVITIES

A formal civic organization should be permitted to engage in lawful economic activities provided that (i) the civic organization is organized and operated principally for the purpose of conducting appropriate non-commercial activities, and (ii) that no profits or earnings are distributed as such to founders, officers, board members, employees, or members. Such activities may be engaged in provided that any applicable requirements for licensing and permits are met.

According to the laws regulating the activities of non-governmental organizations, such organizations may earn profits by conducting commercial activities for the purpose of increasing its financial reserves. However, as mentioned before, the profit earnings may be used for financing only the activities that are to implement the purposes indicated in the charter.

The “Association of Mongolian Foresters” registered with the renewed registry has the purpose to support the protection of forests and wild animals, maintenance of the ecological balance, the rational use of the natural wealth and the development of the secondary processing industry. Upon obtaining the permit from the Ministry of Environment Unit for the Protection of Nature and the Administration of the Bogdo Khan Mountain Reserve for the purpose of reviving the forests had planted the tree seeds. Now, it sells transplants to the businesses engaged in the lumber industry basing on their duty under 1995 Law on Forests to restore the forests. The profits earned from this activity in return become the resource for financing other activities of the Association of Mongolian Foresters.

6.4. LICENSES AND PERMITS

Any civic organization engaging in an activity (e.g., health care, education, social services to AIDS victims) that is subject to licensing or regulation by a government agency should be subject to the same generally applicable licensing and regulatory requirements and procedures that apply to similar activities of individuals, business organizations, or public agencies. If a permit (e.g., a parade permit) is required for certain activities, including public policy activities, civic organizations should be subject to the same requirements for obtaining permits as are individuals, business organizations, or public agencies. These licensing and permit requirements should not be used to stifle legitimate activities of civic organizations, including legitimate public policy activities.

A non-governmental organization as any other organization or individual is required to obtain the special permits in order to conduct certain type of activities. A non-governmental organization enjoys the status of a juridical person since its official registration. Therefore, the laws defining the legal status of juridical persons are equally applicable to non-governmental organizations. In particular, according to Article 22 of the Civil Code, a juridical person must obtain a special permit in order to conduct certain activities mentioned in the law. For example, an advocate must join the voluntary organization for advocates regardless of the type of law practice he/she is engaged in. A citizen of Mongolia in order to engage in the private law practice must obtain a special permit and the member of the Cabinet in charge of legal issues grants such a permit to an individual who filed the petition and successfully passed the examination. "The permit to engage in the services" provided by the advocate obtained by an individual who was given a permission to provide the advocates legal services is analogous to the "license" or "permit to engage in the services" provided by state auditors of the Government authorized body to conduct auditing activities.

A non-governmental organization may organize meetings and gatherings in accordance with the requirements of the law in order to express its opinions for its own, state or public interests. A non-governmental organization obtains the permit if it is to organize the street meeting or gathering from the Soum, Duureg Governor. However, if it is to organize the meeting or gathering on the street situated on the boundary line of the Soum and Duureg, it shall obtain such permit from the Governor of the Aimag or Capital City. /The Law on Procedures for Organizing Meetings and Gatherings, Article 9, para.1/.

An organization with the competence to grant permits must exercise control over a non-governmental organization only to the extent of its granted permit. This is discussed in Section 4.2 of Chapter 8.

CHAPTER 7

FUNDRAISING

One of the major financial sources of non-governmental organizations is the contribution. The sources of non-governmental organizations' incomes are as follows:

1. membership dues and contributions;
2. contributions made by individuals, business entities and other organizations;
3. profits earned by commercial activities conducted for the implementation of charter purposes;
4. borrowed or inherited funds, and funds allocated from the state budget for project implementation.

These provisions prove that the major source of income for non-governmental organizations is contribution. /The Law of Mongolia on Non-Governmental Organizations, Article 19/.

It is not a secret that members of a non-governmental organization in addition to paying their membership dues make contributions to support the activities of an organization and even to strengthen their reputation and influence. It is particularly evident on the example of political parties.

Except for the political parties the majority of foundations active in Mongolia are financed by contributions. Examples are non-governmental organizations such as "Oyuntulkhuur Foundation" and "Foundation for People." These foundations spend the monies raised by contributions to feed and clothe orphan or poor children as well as to send overseas for medical treatment children with intense disease incurable in the home country. There are many charitable organizations and foundations that raise funds by the same means and engage in the same activities as mentioned above. /Some of them have been created by the prominent people such as the First Lady or celebrity singers/. Conversely, the non-governmental organizations are prohibited to make contributions to political parties and/or coalitions or to candidates to the State Ih Hural, Presidential and Citizen Representatives Hural elections. /The Law on Non-Governmental Organizations, Article 20, para.4/. For instance, the Mongolian People's Revolutionary Party, one of the most influential political forces in Mongolia, during the State Ih Hural election campaigns organized the fundraising meeting that successfully brought it approximately 40 Million MNT contributions made by individuals and many different organizations. However, there is no any information on whether the non-governmental organizations contributed, and if it did in what amount.

7.1. PERMISSIBLE FUNDRAISING ACTIVITIES

Formal civic organizations should be permitted to engage in any legitimate fundraising activity, including door-to-door, telephone, direct mail, television, campaigns, lotteries, and other fundraising events.

Mongolian non-governmental organizations raise funds by organizing donor meetings, musical performances, shows, lotteries and many other fundraising activities. For instance, the "Ulaanbaatar Foundation" founded in 1999 that has the purpose to develop the capital city issued a series of lottery tickets and sold them out for the 360 Anniversary of the Capital City. And the profits earned from the sale of lottery tickets were contributed to the activities for the development and progress of the capital city. The incident of raising funds through the issuance and sale of lottery tickets is common in Mongolia. Lately, Mongolian National Olympics Committee in cooperation with the Bridge LLC sold out the so-called "Sydney 2000" lottery tickets and organized the so-called "Sydney 2000" fundraising show in which celebrity singers and bands performed. All the profits made by these activities were designated to finance the travel expenses of Mongolian sports team to participate in the 2000 Sydney Olympics.

The Mongolian Red Cross Society is one of the most dynamic non-governmental organizations in Mongolia. The weather had harshly chilled and there was a heavy snowfall in the fall of 2000. As a result, it was impossible to pasture the livestock on the graze land. The natural disaster embraced about 80 percent of the territory and killed more than 2 Million heads of livestock. Most of the cattle raiser households were left without livestock and for that reason their lives had worsened. Taking into consideration these circumstances, the Mongolian Red Cross Society with the purpose to help the victims of this disaster had organized comprehensive work, which proved itself to be fruitful,

involving the public such as organizing movements to raise funds from domestic and foreign citizens and organizations as well as delivering to herders food, warm clothes and fodder purchased by the monies raised.

7.2. FUNDRAISING ACTIVITIES – LIMITATIONS, STANDARDS, AND REMEDIES

7.2.1. Fundraising through a public solicitation campaign should require registration with a public agency, which will issue permits, badges, and other identification materials to the fundraisers.

7.2.2. General fraud and other criminal laws should prohibit a civic organization from engaging in any misrepresentation in connection with the solicitation of funds from others (e.g., using another organization's name or misrepresenting the use to which the funds will be put).

7.2.3. Under the rules by voluntary regulatory mechanisms, civic organizations should disclose publicly the way in which funds received from public donations are spent, and, specifically, the extent to which the funds raised are used or expected to be used to defray the direct and indirect costs of fundraising.

The fundraising activities are organized in many different modes. In order to raise funds by lottery or bet games, it is necessary to obtain a permit from the Ministry of Finance and Economics of Mongolia. However, it is not required to obtain any official permits for organizing fundraising musical performances and shows. At this time, there is no specific legal regulation on the registration or permits for engaging in fundraising activities through gatherings, telephone and direct mail. Although there is a law in Mongolia that sets forth procedures for organizing meetings and gatherings, the law defines a meeting and a gathering as “an activity organized with the purpose to publicize the opinions and propositions on the issue related to the political, social, economic and human rights and freedoms issues by the citizens of Mongolia.” /The Law of Mongolia on the Procedure of Organizing Meetings and Gatherings, Article 3, para.1/. The law also states that “this law is not applicable to the organization of conferences and meetings between the state or political parties and electors and/or citizens or between the non-governmental organizations and members and/or supporters. /Id. Article 5/. It means as well that this law is not applicable to fundraising meetings organized by non-governmental organizations. The end result of this fact is that substantial problems are faced when it comes to detecting the fraudulent and self-dealing acts involved in the receipt of funds under the fundraising shield. However, the non-governmental organizations are required to submit their annual reports to the tax authorities. The Law on Non-Governmental Organizations requires the non-governmental organizations to include in their report the information on annual incomes and expenditures and most importantly, all the information on contributions. The report must include the list of names of individuals and organizations, amount and mode of their contributions in excess of 700000 MNT.

The issue of reporting and accounting to the contributor individuals and organizations on the expenditure of contribution monies must be determined by the contract concluded with the contributor. According to Article 225 of the Civil Code, “in case the contribution funds have been spent contrary to their designation, the contributor has a right to demand the funds back from the wrongful party and that they be spent in conformity with their purposes.” However, it is unclear whether in real life non-governmental organizations conclude agreements with contributors. The contributors are entitled to inspect the reports and books of the non-governmental organization. The Law on Non-Governmental Organizations prescribes that the reports and books of a non-governmental organization shall be open to public and its members.

According to Article 192 of the Criminal Code of Mongolia “If the damage caused to the state and public interests as well as legitimate rights and interests of individuals by abuse of official status and

powers, i.e. an official used his official status contrary to the interests of his/her official duties with the covetous or other personal interest motives is not minor, such official shall be sentenced up to 3 years of imprisonment with or without negative injunction to perform his/her official duties or up to 18 months of performing correction works.” According to the official interpretation of this article the term “official is applicable to the public political, special and administrative servants as well as to managing officers of political, business, voluntary and other organizations.”

CHAPTER 8

REPORTING, SUPERVISION, AND ENFORCEMENT

8.1. INTERNAL REPORTING AND SUPERVISION

8.1.1. The highest governing body of a formal civic organization (the assembly of members or the governing board) should be required to receive and approve reports on the activities and finances of the organization to ensure that they are consistent with its statutory purposes.

The main method of supervising the activities of non-governmental organizations is the method of reporting. Although the competent bodies exercise the external control over the finances and activities under the law, the highest governing body of a non-governmental organization undertakes internal supervision.

The governing body of a non-governmental organization exercises regular internal or institutional control for the purpose of ensuring the accurate and efficient implementation of the purposes and objectives of a non-governmental organization. This rationale is reflected in the Law on Non-Governmental Organizations Article 11 Section 1 paragraph 4 and Section 2. The law imposes a mandatory duty upon the non-governmental organizations to include in their charter their system of monitoring or internal supervision. /Id. Article 10, para.4/.

A non-governmental organization exercises its internal supervision in the following methods:

1. the supervision at the levels of organizational structure;
2. the Supervisory Commission elected by the governing body or the governing board or meeting of all members.

1. This method of supervision is characterized by the reporting at every level of an organizational structure. This method is used regardless of the scope of activities and size of the organization. For example, the non-governmental organization named “Free Artists Society” founded in 1998 with regard to reporting procedures of the organization stated in its charter that “the officers of the organization shall report monthly, quarterly; the Executive Director shall report quarterly, semi-annually and annually to the President and the Governing Board of the organization and obtain their directives related to performance of their further duties.

2. This method is used by organizations larger in size and with the greater outreach. The Supervisory Commission is sometimes called the Supervisory Council. As though commission and council is distinct in terms of terminology, principally there is not much difference in the meaning. For example, “The Association of the Institute of Administration and Management Development Graduates” founded on 1 September 1997 while determining its organizational structure stated in its charter that the members of the Governing Board and the Supervisory Commission shall be elected by the All Members Meeting for the period of two years. Moreover, the “Zorig Foundation” founded in October 1998 for the purpose of supervising the activities of the organization stipulated in its charter that a 3 member Supervisory Council shall be appointed by the Governing Board. Therefore, the Supervisory Council or Supervisory Commission is set up for certain period in order to exercise efficient and effective supervision.

Furthermore, the Governing Board of a non-governmental organization may exercise the internal supervision through establishment of an audit-working group composed of its own members.

According to paragraph 4 of Article 145 of 1994 Civil Code of Mongolia, a competent state organ and founders shall exercise control over the use and designation of the assets of the foundation.

In conclusion of the above-mentioned, it is necessary to stress the importance of regular performance of the internal audit on the fixed time schedule, providing members and the citizens with full access to books and reports of the organization and holding the activities of the organization open to public at large in order to ensure the efficient operation of a non-governmental organization. /The Law of Mongolia on Non-Governmental Organizations, Article 5, para.5/.

8.1.2. Some organ of the civic organization (e.g., a special audit commission or an audit committee of the governing board) should as a matter of good practice

be given the responsibility, and each member of a membership organization the right, to inspect the books and records of the organization.

The management of a non-governmental organization for the purpose of examining the financial activities has the discretion to hire the services of an outside auditor or appoint an internal audit group composed of the members of the Governing Board. The Supervisory Commission defined in part 1 of this chapter may simultaneously perform the duties of an audit commission. If there is insufficiency of professional skills of an auditor in the organization in case of conducting internal audit, the service of an outside auditor is hired. In addition, each member of an organization is entitled to inspect the financial books and records. Moreover, the contributors are entitled to inspect the records related to the use and designation of the assets of a non-governmental organization. On the basis of the self-performed inspection, the supporter obtains truthful and accurate information, supervises the disbursement of his/her contributions, and makes a decision on whether to support that specific organization in the future.

8.1.3. A formal civic organization with substantial activities or assets should, as a matter of good practice, have its financial reports audited by an independent certified or chartered accountant.

The non-governmental organizations with substantial activities and assets may have their financial statements examined by an independent auditor of the outside independent organization and government body in case the organization lacks internal professional skills. The donor who makes contributions to the organization sometimes wishes to inspect financial books certified by an independent auditor. In this case, an organization has to hire an independent auditor.

The audit is defined by the law as an independent activity performed by an auditor or an auditing firm and which contractually or according to law assists and counsels the business clients and legal entities in financial planning and research. /Audit Law of Mongolia, 1997, Article 3, para.1/. A non-governmental organization can verify its financial statements by auditing firms on its own initiative and according to this law. /Id. Article 7, para.2/.

The client-non-governmental organization is entitled to choose itself an auditing firm. /Id. Article 11, Section 1, para.1/. The governing body of a non-governmental organization submits its request for audit to the authorized firms and concludes an agreement with such a firm. The hired auditor performs his/her duties only within the scope of an agreement and using the methods defined by international standards. The audit examines and certifies financial instruments upon the request and assists organizations in planning and constituting their internal financial audit. According to paragraph 6 of Article 5 of the same law the audit information shall be kept confidential. It implies that an auditor has a duty to refrain from disclosing the information obtained during performance of his/her services and from using such information in the interests of a third party. This is also reflected in the Law on Secrets of Organizations paragraph 2 of Article 5 and 7.

8.2. REPORTING TO AND AUDIT BY RESPONSIBLE SUPERVISORY AUTHORITY

8.2.1. Any formal civic organization receiving more than minimal benefits from the state or engaging in a significant amount of public fundraising should be required to file appropriate reports at least annually on its finances and operations with the appropriate authority that is responsible for general supervision of civic organizations.

A non-governmental organization submits its financial statements and reports to the relevant competent authorities in accordance with the appropriate procedures and within the time specified by law regardless of origin of its assets. Chapter 5 titled “Non-Governmental Organizations Reports” of the Law of Mongolia on Non-Governmental Organizations disposes of this issue. According to Article 23 of this Chapter a non-governmental organization shall file in conformity with relevant procedures its annual financial report for the previous calendar year with the Tax Office by no later than February 15 of the following year and the activity report with the Ministry of Justice and Home Affairs by the

deadline specified above. However, paragraph 5 of Article 5 of 1993 Accounting Law of Mongolia stipulates that by no later than 20th of the first month of the following quarter the quarterly financial reports as well as by no later than February 10 of the following year the annual final report shall be respectively submitted. Paragraph 2 of Article 8 of the Business and Legal Entity Income Tax Law of Mongolia prescribes the same deadline for financial reports. According to 1998 Value Added Tax Law, by no later than 10th of the following month the monthly report as well as by no later than January 15 of the following year the annual report of the value added tax must be respectively submitted to the Ministry of Finance and Economics.

The State Audit Committee may inspect the activities of non-governmental organizations that exercise the special and inferior sector functions of the state executive bodies and receive subsidies from the state budget. /The Law on State Audit, 1995, Article 6, 7/.

These bodies with the supervisory authority must inspect in detail the reports of non-governmental organizations and take appropriate measures if they reveal any discrepancy.

8.2.2. Small formal civic organizations should be allowed to file simplified reports or none at all.

According to the laws regulating the activities of non-governmental organizations each non-governmental organization must submit according to the relevant procedures to appropriate authorities the activity report regardless of its organizational structure and the scope of its activities. However, the financial reports of non-governmental organizations considered small in terms of their organizational structure and assets can be simple and must not necessarily be detailed.

The report to be submitted to the Ministry of Justice and Home Affairs shall include the following information:

- 1) an address of a non-governmental organization;
- 2) summary of its activities;
- 3) a balance sheet showing income and expenses for the year by the following categories:
 - a) contributions;
 - b) profits from activities related to the implementation of the purposes of the charter;
 - c) inheritance.
- 4) a list of donors that made cash, in-kind or inheritance asset contribution exceeding 700000 MNT and an asset inventory;
- 5) names and addresses of the Chair and members of the Governing Board as well as the Executive Director.

If a non-governmental organization fails to provide the reports within the specified time after receipt of the written notice requesting to do so, it shall be removed from the Registry by the registering body and publicly announced that it has been removed from the registry. /The Law on Non-Governmental Organizations, Article 18, Section 1, para.2/.

8.2.3. Reporting requirements should make appropriate provision to protect confidential or proprietary information.

The principles such that the activities of non-governmental organizations shall be transparent and their activity and financial reports must be open to the public are reflected in the bylaws of non-governmental organizations. In order to widely involve citizens in the activities of a non-governmental organization it must zealously protect their personal rights and interests. Reporting requirements should include the protection of an internal confidential and proprietary information. If it is not necessary to enlist the information, documents and physical objects, disclosure of which would be defamatory on its face to the reputation and legitimate rights of a person, i.e. personal secrets or the information, documents and physical objects determined as confidential in order to protect the rights and reputation of individuals and legitimate interests of a specific organization, i.e. secrets of an organization in the reports of a non-governmental organization, they must be protected. The scope of the confidentiality of information of persons and organizations is clearly defined in the aforementioned laws and the non-governmental organizations submit the reports to relevant authorities without referring to this confidential information. For example, according to the Law of Mongolia on

Non-Governmental Organizations Article 23 section 2 paragraph 2 only the brief information on the activities shall be included in the report of an organization. It can be inferred that this type of report would not touch upon the confidential information and rights of individuals.

8.2.4. The supervisory authority of the state should have the right to examine the books, records, and activities of a formal civic organization during ordinary business hours, with adequate advance notice.

The state supervisory authority in accordance with Article 70 titled “Business Hours” and Article 74 titled “Limitation on Overtime Work” must notify in advance the non-governmental organizations of its pending performance and financial audit as well as present them an opportunity to adjust their work schedule in order not to distort their normal operations and performance of the workplan.

According to the decree N°50 of the Minister of Justice and Home Affairs of Mongolia, the Ministry of Justice and Home Affairs in concert with the Tax Office of the District on the territory of which a non-governmental organization is located may examine and write an opinion, solely on the basis of financial instruments presented, on the tax payment status of a non-governmental organization and scope of its activities implemented for achieving its purposes. Similarly, according to the decree N°72 of the Minister of Justice and Home Affairs of Mongolia, the Ministry of Justice and Home Affairs in concert with the General Tax Office may examine and write an opinion, solely on the basis of financial instruments presented, on the tax payment status of representative offices of foreign and international non-governmental organizations and scope of their activities implemented for achieving their purposes. The Ministry of Justice and Home Affairs in concert with the Sukhbaatar District Tax Office inspected the performance and financial status of 36 non-governmental organizations in 1999 and of more than 30 non-governmental organizations in March 2000 together with the Chingeltei District Tax Office.

The State Audit Committee may examine the activities of non-governmental organizations that exercise the special and inferior sector functions of the state executive bodies.

8.2.5. The supervisory authority should be able to use random, selective audits of any reporting formal civic organization in order to ensure that the law is properly observed.

The state supervisory authority may oversee the enforcement of laws by non-governmental organizations. In relation to this, the Law on Government of Mongolia Article 7 titled “Powers of the Government Related to the Enforcement of Laws” states that “the Government within its powers specified by law shall exercise control over the enforcement of laws by parties, voluntary organizations and privately-owned business entities.

However, this control may not be in any way discriminatory or exercised to reach the particular purpose. The Law on Non-Governmental Organizations, the Tax Law, the State Audit Law and the Law on Budgets provide the grounds and authority to state organs to supervise the activities of non-governmental organizations.

8.3. REPORTING TO AND AUDIT BY TAX AUTHORITIES

8.3.1. Although reporting should be standardized as much as possible, it is appropriate for separate reports to be filed with the tax authorities. Different kinds of reports should be required for different kinds of taxes (e.g., profits taxes, VAT).

The 1993 Accounting Law of Mongolia requires appropriate bookkeeping from non-governmental organizations on cashflow and financial results of its activities and release of a balance sheet. /Article 3, para.1/. And this is the main method of tax authorities to control the financial status of non-governmental organizations.

Section 2 of Chapter 8 discusses the duty of non-governmental organizations to submit their annual balance sheet within the time specified by the Law on Non-Governmental Organizations and the Accounting Law of Mongolia.

A non-governmental organization shall file with the tax authorities in accordance the Business and Legal Entity Income Tax Law of Mongolia and the Valued Added Tax Law of Mongolia the income tax statement and, in case the annual income of an organization exceeds 15 Million MNT, the value added tax statement.

A non-governmental organization shall state in its income and value added tax statement the information of all financial operations performed and even the income and value added tax exempt activities and the grounds for such exemption. These statements which serve as the main means of tax authorities to exercise control over the financial operations of non-governmental organizations are made on the forms issued by the Ministry of Finance and Economics and should include the taxable activities only.

8.3.2. It is generally inappropriate for the tax authorities to examine any aspects of a civic organization other than those directly related to taxation (including whether the requirements for exemption from taxation have been satisfied) or the use of moneys received from the state or the public.

The tax offices are authorized to inspect the taxable activities only. Tax offices perform the major function of exercising control over the enforcement of tax laws and collecting state and local budget incomes. /General Taxation Law of Mongolia, Article 23, para.1, 3/.

The tax offices have the full authority to grant the taxpayers tax breaks, tax exemptions and tax credits for previously overpaid taxes or, if the taxpayer so wishes, to return the previously overpaid tax fees.

For the purpose of supporting the taxpayers and promoting their activities according to the law some parts of the taxable items as well as the incomes, properties, goods and services that did not meet the minimum threshold determined by the taxpayer may be exempted from the tax. /Id. Article 8/.

8.3.3. Small civic organizations should be exempted from filing tax reports, or allowed to file simplified ones.

According to the laws that regulate the financial activities of non-governmental organizations, each non-governmental organization has a mandatory duty to submit the balance sheet regardless of the scope of its activities. A non-governmental organization shall state in its tax statement the tax-exempt activities besides the information of all financial operations performed. This was discussed in section 1 of this chapter.

8.4. REPORTING TO AND AUDIT BY LICENSING AUTHORITIES

8.4.1. Any civic organization engaged in an activity subject to the licensing or regulatory control of a state organ should be required to file the same reports with that agency as any other similarly situated juridical or natural persons are required to file.

The non-governmental organizations face with the requirement to obtain the license or permit when they decide to conduct certain type of activities. The body that is authorized to grant such “License” is entitled to inspect certain reports it considers necessary before granting it. The right to inspect the reports periodically in order to supervise the activities of a non-governmental organization attaches as soon as it grants a license or a permit.

The justification for granting a permit from the Government and its authorized bodies to non-governmental organizations must be clearly defined in the law. For instance, in accordance with Article 19 of the Government Law of Mongolia and Article 32 titled “Participation of Non-Governmental Organizations in the Environmental Protection” of the Law on the Protection of the Environment, the specific functions of the government executive body related to the nature and

environmental protection may be delegated to a non-governmental organization with the charter purpose to protect the nature on the basis of a contract the implementation of which can be also financed.

Currently, in the environmental sector there are more than 40 non-governmental organizations active in Mongolia that have their charter purpose to protect the nature and environment. For example, the Ministry of Nature and Environment with the involvement of the foreign assistance currently has the “Mongolian Environmental Protection Association” implement its functional duty to preserve and manage the natural reserve “Khustai Hill,” the “Ecology and Development” non-governmental organization implement its functional duty to disseminate information and conduct the research of the “Bogdo Khan Mountain National Reserve” and the watery swamplands as well as the “Association of United Foresters” implement its functional duty to protect and restore forests.

Therefore, the Ministry of Nature and Environment has a full authority to inspect the reports in order to supervise the financial operations and the implementation of contracts concluded with non-governmental organizations active in this sector.

8.4.2. A licensing organ should have the right to audit and inspect a formal civic organization for compliance with applicable licensing or regulatory requirements, but should not generally examine or supervise other aspects of the organization.

The requirement for non-governmental organizations to obtain a license /permit certificates/ to conduct certain type of activities has been already discussed in section 8.4.1 of this chapter. The body authorized to grant permits to the activities of non-governmental organizations has a right to audit and inspect the activities conducted by such permit in order to verify if they comply with applicable licensing and regulatory requirements.

For example, the Chamber of Notaries Public is a non-governmental organization, which protects the interests of notaries public, and according to the law they must join this Chamber. According to the Law on Non-Governmental Organizations, it shall be independent from the state. As the Minister of Justice and Home Affairs grants the license of notaries public, the Ministry may conduct the direct or outside audit of the activities of Chamber of Notaries Public and notaries public based on the grounds mentioned in the law and, if necessary, involve relevant professional experts. /The Law on Notaries Public, 1997, Article 43/. Another example is that the state central administrative body in charge of cultural issues and the Aimag, Soum and District Governors grant special permits for cultural activities to non-governmental organizations. /The Law on Culture, 1996, Article 8, para.1/. Moreover, these authorized bodies exercise administrative and professional control on the cultural activities of non-governmental organizations as well as determine their professional level.

8.5. REPORTING TO DONORS

Donors to a formal civic organization should be entitled to contract for disclosure of information adequate for the donor to assess the suitability of the civic organization for receipt of donations and the uses to which donations, or that particular donor’s donations, are put.

We have previously discussed that the activities of non-governmental organizations should be transparent and that their performance reports and financial books should be open to the inspection of the public. Donor individuals and organizations must be fully entitled to the same rights. On the basis of inspection of reports, the individuals and organizations decide upon whether or not they should contribute donations. As there is a high probability of using the name of non-governmental organizations for the purpose of self-dealing, the donors have an indispensable necessity to inspect the reports of non-governmental organizations in order to protect their interests. A donor signs an agreement with a non-governmental organization with the purpose to constantly control the uses to which donations are put by a non-governmental organization. The issue of whether a non-governmental organization should account before the donor on the disbursal of donations contributed

to it must be indicated in the contract. In addition, the contract should require presenting the necessary documents, reports and other information.

8.6. DISCLOSURE OR AVAILABILITY OF INFORMATION TO THE PUBLIC

Any formal civic organization receiving more than a minimal benefits from the state or engaging in a significant amount of public fundraising should be required to publish or make available to the public a report of its general finances and operations. This report may be less detailed than the reports filed with the general supervisory organ, the tax authorities, or any licensing or regulatory organ and should permit anonymity for donors and recipients of benefits in addition to protecting other confidential or proprietary information.

In order to attract the interests and trust of the public, a non-governmental organization conducts its activities transparent to the public. The positive side of this is publicizing and communicating itself to the public.

For instance, there are many non-governmental organizations except for the ones that work for a certain period of time with the financing of the state budget on the scientific and technological projects contracted with the decision of the National Council on Science and Technology. According to the decree N°173 of the Minister of Education of Mongolia, the executing organization submits for the archives of the “Science and Information Center” corporation /trust depository/ the research work report, which is essentially a government contracted science and technology project implementation progress report. This decree also sets forth the procedures for publicizing and public use of research work reports as well as the procedures for the protection of the confidential information contained in such reports. By the degree of confidentiality, the reports are classified as the report containing the information pertaining to the secrets of the state, the report containing the information pertaining to the secrets of organizations and the report that contains no confidential information. The information classed as confidential can be used only with the permission of an authorized body.

The trust depository, within its functional duties of information dissemination and publication, in cooperation with the contracted parties organizes symposia, conferences, exhibitions and other activities. They are directed at the usage of content based thesis-bibliography information database of reports and its findings in information services, publishing and placing them in the local and international database networks.

Another example is the publication in the 8 April 2000 issue of the “Today” newspaper of a brief information on how the “Foundation for People” created in 1998 rendered material assistance worth of about 4 Million MNT to the three eastern aimags.

This type of publication should ensure the confidentiality of the identity of donor individuals and organizations as well as it may not disclose the internal and personal confidential information.

8.7. SPECIAL SANCTIONS

In addition to the general sanctions to which a civic organization is subject equally with other juridical persons (e.g., in laws governing contracts and negligence), it is appropriate to have special sanctions (e.g., fines, penalty taxes, or the possibility of involuntary termination) for violations peculiar to civic organizations (e.g., self-dealing, improper public fundraising practices, violation of spending rules contained in tax legislation).

It was previously discussed that a non-governmental organization enjoys the status of a legal entity as soon as it registers with the public registry. The Obligor-a party in the civil transaction owes a duty to the Obligee- the other party to perform a certain act such as to transfer property, perform certain type of work, render assistance, make a payment, or to forbear from performing a certain act. If the Obligor – a legal entity /non-governmental organization/ did not perform or did not appropriately perform the duties stated in the agreement, it shall be liable for and pay all the resulting damages to the

Obligee only if it was proven wrongful. /the Civil Code, Chapter 14, Article 160; Chapter 17, Article 190, 191/.

/If the contract stipulates for the payment of penalty in case of Obligor's non-performance or inappropriate performance, the penalty or damages shall be paid by the Obligor according to the Civil Code Article 180 paragraph 7/.

For example, according to the section 2.2.b. of attachment 2 of the "Science and Technology Project Implementation Procedure" adopted by the Government resolution N°14 in 1998, the financier- Science and Technology Foundation has a right to temporarily suspend its financing or to terminate the project in case an organization implementing the science and technology project delayed its financial reports and information, spent the project monies and assets contrary to their designation or did not accomplish the projected outcomes. In this case, the project implementers owe a duty to repay back the monies spent on the project according to the aforementioned provision of the Civil Code.

According to 1998 decree N°173 of the Minister of Education on the "Appointment of the Trust Depositor" an organization, which implemented the project shall pay in-kind or in cash the sum equal up to 10 percent of the total expense budget of the project or may be taken a measure not to be granted any project in the future in case it did not submit to the trust depositor its research work report within the time specified in the agreement with the project financier.

However, it was discussed in section 3 of Chapter 4 that a non-governmental organization shall not be liable for the damages to individuals, business entities and organizations caused by unlawful acts of its founders, members, governing body members and officers and that the founders, members, governing body members and officers shall not be personally liable for the liabilities of a non-governmental organization. This rule is enacted in the Civil Code Article 27 paragraph 2; Article 145, paragraph 3 and in the Non-Governmental Organizations Law Article 15, paragraph 5.

The issue of audit and inspection of the activities of a non-governmental organization was briefly discussed in section 2 of Chapter 8. In case of any violation found in the activities of a non-governmental organization, the commensurate sanctions shall be imposed by a competent body. In particular,

- 1) The Ministry of Justice and Home Affairs may refuse to register a. in case of creation of a non-governmental organization; b. amendments made to the charter. In this case, a non-governmental organization may seek judicial relief or correct the reason of refusal to register. /The Law on Non-Governmental Organizations, Article 16, para.8, 9; Article 17/.
- 2) The Ministry of Justice and Home Affairs shall remove a non-governmental organization from the public registry if a non-governmental organization fails to submit its activity report after the receipt of a written notice. /Id. Article 18, para.2/.
- 3) The court shall order a compulsory dissolution of a non-governmental organization in case it has conducted activities inconsistent with the purpose of the charter or has repeatedly or seriously violated the laws. /Id. Article 8/.
- 4) The liability of officers and governing board members of a non-governmental organization was discussed in sections 2, 3 and 4 of Chapter 4. However, if a breach of the Law on Non-Governmental Organizations is held not to constitute a criminal offense, the court considering the nature of a breach shall impose the following sanctions:
 - a. a penalty in amount of 40000-60000 MNT shall be imposed upon the wrongful officer and a penalty in the amount of 100000-150000 MNT shall be imposed upon the wrongful organization in cases of unlawful distribution of profits in the form of dividends or payment under the surety or guaranty on behalf of an individual, business entity or an organization;
 - b. a penalty in the amount of 40000-60000 MNT shall be imposed upon the wrongful officer and the earned income shall be disgorged if a member of the governing board or officer of a non-governmental organization conducted any financial or commercial activity using the assets and finances of the organization for his/her personal gain;
 - c. a penalty in the amount of 50000-60000 MNT shall be imposed upon the wrongful officer and a penalty in the amount of 200000-250000 MNT shall be imposed upon the wrongful organization if a non-governmental organization made contributions to the political

parties, party coalitions or candidates in the State Ih Hural, Presidential and Citizens Representative Hural's elections;

- d. a penalty in the amount of 10000-20000 MNT shall be imposed upon the wrongful officer if a non-governmental organization fails to file its annual report with relevant authorities within the time specified by law.
- 5) If an organization failed to release its financial report for four consecutive months, its activities shall be terminated and its public registration certificate shall be ceased. /The Accounting Law, 1993, Article 12, para.3/.
- 6) In case of violating the law related to the secrets of the state, organizations and individuals, the criminal or administrative liability shall be imposed depending on the nature of the damage caused.

CHAPTER 9

TAX PREFERENCES

9.1. INCOME OR PROFITS TAX EXEMPTION FOR CIVIC ORGANIZATIONS

Every formal civic organization, whether organized for mutual benefit or for public benefit, and whether a membership or non-membership organization, should be exempt from income taxation on moneys or other items of value received from donors or state organs (by grant or contract) and regular membership dues, if any. A variety of approaches may be taken with respect to exemption for interest, dividends, or capital gains earned on assets or the sale of assets, with greater preferences on such items generally being made available to PBOs.

Although the non-governmental organizations are defined as not-for-profit, they must pay the fixed taxes. The reason is that according to Article 5 of the General Tax Law of Mongolia “domestic and foreign business entities, organizations and foundations on the territory of Mongolia shall be the taxpayers” and according to Article 3 of the Business Entities and Organizations Income Tax Law “non-governmental and religious organizations shall be the taxpayers.”

However, before the decision of the State Ih Hural general meeting convened in November 2000 to impose the tax on any donation made to non-governmental organizations the following incomes of non-governmental organizations were tax-exempt according to the Business and Legal Entity Income Tax Law of Mongolia:

1. member dues and supporter donations;
2. income generated by publicly registered public benefit non-governmental organizations from their activities related to the implementation of their charter purposes;
3. donations made to publicly registered public benefit non-governmental organizations.

It may not be understood that tax law-defined incomes generated from the activities related to the implementation of charter purposes are applicable to all non-governmental organizations. However, the tax law provides that only incomes generated from the activities of publicly registered public benefit non-governmental organizations related to the implementation of their charter purposes would be tax-exempt.

According to the official interpretation contained in the 1996 resolution №167 of the Supreme Court of Mongolia, “that part” of an income generated by not-for-profit foundations, religious and non-governmental organizations from the commercial activities conducted for the purpose of providing the conditions for implementation of their charter purposes shall not be considered as a taxable income. This interpretation of an income generated from the activities of publicly registered public benefit non-governmental organizations related to the implementation of their charter purposes does not mean that the incomes of a particular non-governmental organization shall be exempted from the tax. However, the tax shall be imposed on incomes generated by non-public benefit member benefit organizations from the commercial activities conducted for the purpose of implementing charter purposes. This type of member benefit organizations such as “Mongolian Employers Association” and “Mongolian Free Artists Association” can be mentioned in numbers. According to the current statistics, in total there are 70 member benefit organizations active in Mongolia.

The Mongolian Children’s Rights Center is one example of a public benefit non-governmental organization that conducts commercial activities for the implementation of the purposes of its charter. This Center besides doing the research works on the means of guaranteeing the rights of children in Mongolia sells books and handbooks related to this issue written and published by it under the government contract. The incomes earned from this activity shall be fully tax-exempt.

9.2. INCOME TAX DEDUCTION OR CREDITS FOR DONATIONS

To encourage philanthropy and good citizenship, individuals and business entities should be entitled to reasonably generous income tax deductions or credits with respect to donations made to PBOs.

There is no specific disposition in the laws of Mongolia on the deduction of tax on incomes of non-governmental organizations.

9.3. TAXATION OF ECONOMIC ACTIVITIES

Any net profit earned by a formal civic organization from the active conduct of a trade or business could be: (a) exempt from income taxation; (b) subject to income taxation; (c) subject to income taxation only if trade or business is not related to and in furtherance of the not-for-profit purposes of the organization; (d) subject to income taxation under a mechanical test that allows a modest amount of profits from economic activities to escape taxation but imposes tax on amounts in excess of the limit; or (e) subject to income taxation only if the profit is not committed and used to carry out the principal purposes of the organization.

The law does not strictly prohibit non-governmental organizations to engage in commercial activities other than for the implementation of charter purposes. For instance, the Mongolian Youth Association possesses a quite large four-floor building and receives income by leasing the most part of it to business entities and other organizations. This income is taxable according to the Business and Legal Entity Income Tax Law of Mongolia. The tax laws specifically define the tax percentages. For example, the 20% tax is imposed on the income earned from leasing the above-mentioned property. Moreover, in case of a real estate sale, 2% tax is imposed on total amount of the sale price within 10 days of consummation of the sale.

9.4. VAT AND CUSTOMS DUTIES

9.4.1. PBOs should be given preferential treatment under a value added tax (VAT).

9.4.2. PBOs should be given preferential treatment under or exemption from customs duties on imported goods or services that are used to further public benefit purposes.

The individuals and legal entities engaged in the importation, manufacturing and sale of goods as well as in providing the services on the territory of Mongolia shall be the payers of the value added tax. According to the Value Added Tax Law of Mongolia, non-governmental, religious and analogous to them organizations are defined as “Value Added Tax Payers.” It means that a non-governmental organization must pay the value added tax if it engages in the commercial activities, which generate the incomes taxable under the Value Added Tax Law. For example, according to the Value Added Tax Law the incomes generated by leasing rooms and apartments in the buildings and constructions fall under the value added taxable income. However, if the service such as consulting, drafting books, textbooks and handbooks provided by non-governmental organizations to others qualify as an activity conducted for the implementation of the charter purposes, the incomes generated from it shall not be imposed the value added tax. Moreover, the goods and commodities received by non-governmental organizations and foundations from foreign and international organizations in the form of a humanitarian assistance or aid are exempted from value added tax. /The Value Added Tax Law, Article 9, para.2.4, 2.7/.

As per the customs duties, the goods that are crossing the border in the form of a humanitarian assistance and aid from foreign and international organizations to non-governmental organizations as a recipient are exempt from customs duties. /The Law on Customs Tariffs, Article 20, para.4, 5/. For example, the German “Help International” non-governmental organization imported 4 complete kits of

mobile bread-making machines as the assistance to the penitentiary facilities in 1997. They all had been fully exempted from the customs duty. One of the negative implications that arise from this is the widespread incident of bringing into the country and selling an enormous amount of merchandise shielded by the name of humanitarian assistance or aid by some individuals and organizations with the purpose to make profits, while at the same time, escape from their duty to pay taxes. Therefore, it is necessary to sophisticate the control mechanism over the use and allocation of humanitarian assistance goods. However, the law is silent on whether the equipment imported from foreign country for purposes of the project implemented by a non-governmental organization shall be tax-exempt or given a preferential tax treatment. Therefore, the equipment and other supplies to be imported from the foreign country for the purposes of the project implemented by a non-governmental organization should be exempted from customs duties or given a certain type of deduction. However, in giving such preferential treatment it is appropriate to take into consideration the purposes and outcomes of the activities to be implemented.

9.5. OTHER TAXES

9.5.1. To encourage formal civic organizations further, exemption from or preferential treatment under other tax laws (e.g., taxes on real or personal property, sales taxes, and estate or inheritance taxes) should be considered.

9.5.2. No civic organization should be exempted or given preferential treatment under generally applicable social security taxes (including levies for health and retirement funds).

As per other taxes, a non-governmental organization deducts the personal income tax from the salaries of its employees in the amount specified by law. This is described in the law as follows:

The tax shall be imposed on the taxpayer's annual compensation and incomes analogous to it. They are:

- a. the employee compensation, salary, bonus, additional benefits and other analogous to them incomes earned from the full-time work performed for business entities and organizations under the employment contract.
- b. the compensation, salary, bonus, additional benefits and other analogous to them incomes earned from the work performed under the contract with business entities, organizations and individuals other than the full-time employer. /Personal Income Tax Law, Article 4, para.1/.

If a particular non-governmental organization has in its possession any motor vehicle, it must pay the motor vehicle tax in the amount specified in the Motor Vehicle Tax Law or if it has in its possession a gun, it must pay the gun tax in accordance with the Gun Tax Law regardless of whether the motor vehicles or guns are actually used.

However, the guns in possession of non-governmental organizations shall be exempted from the tax if:

- 1) the police authority has given the certificate on the basis of its finding that the gun is being used for museum exhibitions, art performances and can not be used in hunting purposes;
- 2) the gun is in possession of the nature guard and given for performing the official duties;
- 3) the gun is used solely for the sports and training purposes.

Medical insurance is another type of duty. An employee of a non-governmental organization shall purchase the medical insurance on a voluntary basis. /the Medical Insurance Law, Article 7, para.2/. The medical insurance premium may not exceed 6 percent of the employee compensation. /Id. Article 8, para.2/.

CHAPTER 10

FOREIGN CIVIC ORGANIZATIONS AND FOREIGN SOURCE OF FUNDS

10.1. ESTABLISHMENT AND SUPERVISION OF FOREIGN CIVIC ORGANIZATIONS

A formal civic organization that is organized and operated under the laws of one country, but that has, or intends to have, operations, programs, or assets, in another country should generally be allowed to register a branch as a formal civic organization in that other country, and such branch should enjoy all of the rights and be subject to all of the requirements of civic organizations in that other country. A foreign civic organization should be permitted to create a subsidiary or affiliated organization as a founder, and such subsidiary or affiliate should be treated for all purposes as a lawfully organized entity under domestic law.

It was mentioned in section 2.8 of Chapter 3 that unless otherwise prescribed in the laws or international treaties of Mongolia, foreign citizens and stateless persons legally and permanently residing on the territory of Mongolia may create non-governmental organizations or join them according to the procedure defined by the law.

The establishment of different foreign and international non-governmental organizations as well as their representative offices is becoming a common practice in the last years in Mongolia. Currently, there are about 60 foreign and international non-governmental organizations active in Mongolia. These organizations may be divided into the following categories according to the scope of their activities:

- 1) organizations supporting the development of education, culture and science;
- 2) organizations providing charitable and humanitarian assistance;
- 3) organizations helping children living in poor conditions, providing them with the life basic essentials and education;
- 4) organizations in health sector;
- 5) organizations in environmental sector;
- 6) organizations developing the economic and social cooperation.

According to the Civil Code Article 75 titled “The Owner,” the representative offices of foreign and international non-governmental organizations may own on the territory of Mongolia and according to Article 87, 432 are entitled to possess, use, dispose of or own the property or things within the bounds of law.

It was mentioned in section 2.2 of Chapter 3 that the registration of representative offices of foreign or international non-governmental organizations requires that the documents be translated into Mongolian. The “Procedure for Granting a Permit for Opening and Operation of a Representative Office of a Foreign and International Non-Governmental Organization adopted by the decree N°72 of the Minister of Justice and Home Affairs provides that: the decision to register representative offices of these organizations with the public registry shall be made by the Ministry of Justice and Home Affairs after the completion of all required registration documents; in case of registration with the public registry, the registration number and operation permit shall be granted; if the purpose of such an organization or a representative office does not conform to the obligations undertaken under the laws, bilateral and multilateral treaties of Mongolia, the registration shall be refused and the permit shall not be granted; the permit is granted for the period of up to 3 years and it may be prolonged up to 2 years upon the request for further operation of a non-governmental organization or a representative office; if a representative office engages in commercial activities with the profit earning purpose not related to the implementation of its charter purposes, or takes actions contradicting the national traditions and customs, or conducts activities against the national security and sovereignty, or engages in other activities prohibited by law, it shall be dissolved, removed from the public registry and announced as such to the public.

This procedure has been in force since 1997 and since then up to this day certain unlawful conducts related to the activities of non-governmental organizations have been revealed. For instance, the number of organizations registered as non-governmental organizations but conducting religious activities is increasing. It is indisputable that the reasons hidden behind this are the attempt to escape taxes or to introduce into Mongolia the religious dogmas that have been prohibited as tyrannical by some communities of the world. For example, the organizations registered under the name the “International Humanitarian Organization,” the “Food Assistance Organization” and the “Representative Office of the International Assistance and Aid” have been discovered for conducting the religious activities although registered as a non-governmental organization. Not a few organizations conduct or attempt to conduct religious activities using the low living standards in Mongolia under the shield of the name of a non-governmental organization with the purpose to provide food and clothes or assist in some other similar ways. If a particular organization wishes to engage in the religious activities, it should refuse from its status of a non-governmental organization, be removed from the public registry and obtain a permit for religious activities under 1993 Law on the Relations between the State and Churches.

The control on whether the foreign or international non-governmental organizations conduct the activities in conformity with their charter purposes is exercised by the “Council in Charge of Foreign Issues” of the Ministry of Justice and Home Affairs. The Soum and District Tax Offices of where the organization is located according to the relevant legislation exercise the control on the financial operations of such organizations.

10.2. FOREIGN FUNDING

A formal civic organization that is properly registered or incorporated in one country should generally be allowed to receive cash or in-kind donations or transfers from another country, a multilateral agency, or an institutional or individual donor in another country, so long as all generally applicable foreign exchange and customs laws are satisfied.

The representative offices of foreign and international non-governmental organizations as domestic non-governmental organizations shall conduct their activities on the territory of Mongolia in accordance with the Law of Mongolia on Non-Governmental Organizations and other laws enacted in conformity with this law. Therefore, the funding of representative offices of foreign and international non-governmental organizations shall consist of member dues and contributions, contributions from individuals, business entities and organizations, profits earned from the activities related to the implementation of charter purposes, loans, inheritance properties and funds granted from the state budget for the purpose of project implementation.

Indisputably, foreign and international non-governmental organizations annually allocate certain budget funds for setting up their representative offices.

There are many non-governmental organizations and foundations of this type with the wide range of activities in Mongolia. From those, the Representative Office of the German “Hanns Siedel Foundation” or the Mongolian Office of the “Amnesty International” may be mentioned as an example. The “Hanns Siedel Foundation” opened its Representative Office in Mongolia in 1995 and conducts a number of useful activities such as conducting legal training and publication, organizing conferences and symposia on urgent legal issues and providing continuing legal education opportunities and scholarships for law study in Germany. All these activities are financed by the Hanns Siedel Foundation. Moreover, the “German Society for Technical Cooperation” of the Federal Republic of Germany cooperates with the Mongolian governmental organizations on the solution of urgent issues arising in the economic and social sector, improvement of legal education, development of laws and legal regulations as well as on the provision of technical assistance. For instance, the Representative Office of this Society that cooperates with the Ministry of Justice and Home Affairs is implementing the “Mongolian Economic Law Reform” project and within the scope of this project has drawn up the Draft Civil Code and Draft Civil Procedure Law and they are pending the State Ih Hural discussions. Furthermore, it organized the first phase of the two-phase training seminar designed for judges at all the judicial bodies of Aimags and the Capital City and has just embarked on the second

phase of the training. In doing so, the project donates to the courts of Aimags and the Capital City the necessities for their work such as complete computer sets, Xerox machines and judge handbooks. All such activities and donations are financed by the Government of the Federal Republic of Germany.

Besides the funding granted by their central bodies, according to the Law on Non-Governmental Organizations the donations contributed by individuals and organizations of their citizenship is another source of funding. For example, the foundations that conduct charitable activities may launch fundraising activities and call the individuals and organizations of their citizenship to make contributions and donations. The funds so raised may be granted as an aid. The fundraising activity to help the victims of heavy snowfall disaster in Mongolia was vigorously conducted in 1999, 2000 and the foreign and international non-governmental organizations actively participated in it. Even today, the donations are being raised to provide herders with livestock, basic foods and other life essentials.

Except for donations, non-governmental organizations may bid in the tender offers for projects to be implemented by international organizations. By winning in a tender offer, a non-governmental organization earns a right to implement that particular project and the project financing is provided by the organization that offered a bid.

The above-mentioned funds are transferred through the bank wire or the account transfer. The bank that performs the money transfer charges a certain fee for its service. This constitutes approximately 9 percent of the total transfer amount. However, for the domestic money transfer, the bank charges 50 MNT.

CHAPTER 11

OTHER GOVERNMENT RELATIONS

11.1. QUANGOs AND GONGOs

There are many appropriate roles in society for quasi-nongovernmental organizations (QUANGOs) or government organized or controlled civic organization (GONGOs) (e.g., museums, research institutes, special lending or credit programs). However, there is a possibility that such entities might be used inappropriately to benefit state officials, directly or indirectly, either politically or monetarily, and oversight should ensure that these problems do not occur.

There are many non-governmental organizations that operate under a certain degree of government control or have been created by the Mongolian government or by its influence and support as either from the necessity to have such an organization in the country or the necessity to create such an organization according to the international standards. This number with no doubt includes the Mongolian Academy of Sciences, the Mongolian Chamber of Commerce and Industry, the Society for the Protection of Consumer Interests, the Union of Cooperatives and the Association of Homeowners. The specific of these non-governmental organizations lays in the necessity of their existence and their government-defined status. For example, the Mongolian Chamber of Commerce and Industry was created with the purpose to support the commerce and industry as well as to protect the common rights and interests related to the commercial and industrial activities of business entities. There is a specific law that defines the status of this Chamber. /The Mongolian Chamber of Commerce and Industry Law of Mongolia, 1995/. The Chamber within its organizational structure established the Foreign Trade Arbitration Court with the purpose to implement the objectives indicated in the aforementioned law. The separate law regulates the activities of this Arbitration Court as well. /The Foreign Trade Arbitration Law of Mongolia, 1997/. On the basis of the above-mentioned, it can be concluded that although these organizations are not-for-profit non-governmental organizations, their statuses are defined by the government and they are under its special control or it can be said that they exist under the protection of the government.

It can be considered that GONGO was first established in Mongolia in 1929. It is the “Society for Assistance to Defense” that was territorially organized and created with the purpose to organize the movement to help the national defense. This organization supported by the Ministry of Defense further expanded its scope of activities with the purpose to develop the technology and organize sports activities in urban areas.

Furthermore, there are state funds that are created for specific purposes and have met the indicators such as: a/ created by the government; b/ receive government funds; c/operate under the government control. For instance, the Ministry of Finance and the Ministry of Agriculture joint “Agriculture and Industry Fund,” the Ministry of Finance and the Ministry of Health and Social Welfare joint “Pharmaceutical Turnover Capital Fund” and the government constituted “Culture and Arts Fund” all created for the generation of money capital fund resources, their disbursal and regeneration for the purpose of supporting the policy of a particular government sector may be mentioned as an example. These specific purpose state funds do not register with the Ministry of Justice and Home Affairs, but with the Ministry of Finance. In other words, for them the Law on Non-Governmental Organizations is of no application. These funds may not be confused with the foundations that operate under the Law on Non-Governmental Organizations.

There exist professional societies that constitute one type of QUANGOs in Mongolia. An example is the currently active Association of Mongolian Advocates, the Mongolian Notaries Public Chamber and the Association of Mongolian Certified Public Accountants. The legal status of these organizations is also defined by the specific laws. Particularly, these organizations according to the law are entitled to organize examinations qualifying for license, if considers necessary, to suspend the licenses as well as they adopt codes of professional ethics and conduct.

The Law on Notaries Public created the Chamber of Notaries Public in order to coordinate the activities of notaries public at the national level. Although the Ministry of Justice and Home Affairs grants the Notary Public license to individuals and exercises control over the activities of Notaries Public, it does not have a right to interfere with their rights and duties as well as their internal affairs. However, there was once an incident of interference. Particularly, the Ministry of Justice and Home Affairs intruding upon the rights and duties of the Chamber of Notaries Public to organize competitive examination for Notaries Public had given “a birth” to 60 Notaries Public with no any grounds and assessment. This dispute is awaiting the final decision of the court for 2 years.

11.2. STATE GRANTS AND CONTRACTS

There should be an open, fair, and nondiscriminatory procurement process for all substantial grants, purchases, or contracts from a state body of goods and services.

The state may protect the legitimate rights of non-governmental organizations and provide financial and other type of support to their activities. /The Law on Non-Governmental Organizations, Article 9/. The Law on Advocacy has enacted that the Association of Mongolian Advocates shall be under the government protection. For example, in 1996 the government by the Government resolution donated to the Association of Mongolian Advocates the office building with the purpose to support its activities. Moreover, it annually transfers certain amount of subsidies to the Association of Advocates for the purpose of guaranteeing the right of indigenous people to counsel. The state supports its activity in the aforementioned ways.

The performance of services by non-governmental organizations on the basis of the government contracts is quite common. The non-governmental organizations procure the right to perform particular services or undertake research works and obtain the state funding if they meet the determined criteria after participating in the tender offer on equal footing with others in accordance with the procedures prescribed by the law. In relation to this, Article 19 of the Law of Mongolia on Government states that the Government may in accordance with the relevant law, the Government resolution derivative of that law and the contract delegate the specific functions of the government executive body to the execution of non-governmental organizations and provide full or partial funding to cover the related expenses. On the basis of this law, the “Procedure for Delegation of Specific Functions of the Government to the Execution of Non-Governmental Organizations and Provision of Funding to Finance the Expenses Related to It” was adopted by 1995 Mongolian Government resolution N°111. According to this procedure, the Government makes a decision on the recommendation of the relevant Minister on the delegation of special functions of the government executive body or specific functions of sub-sector to the execution of the non-governmental organizations. Upon the decision of the Government, the contract is signed on behalf of the Government by the Minister in charge of the issue concerned or by his/her authorized officer of the state central administrative body. The duration of the contract may vary according to the nature of the services to be performed and either it should be equal to the term of Government authority in power or it should be concluded for the specific term and so mentioned in the contract. On the basis of the signed contract and the Government resolution, the funding to finance relevant expenses is granted and a competent authority and officer in accordance with the laws and procedures exercises control over the disbursement of the funding provided. However, this procedure stipulates the full or partial termination of the funding by the Government or its authorized officer on the grounds of change of conditions of the contract by a non-governmental organization contracted to perform the functions or its inappropriate use of government funds. Furthermore, the “Procedure for Implementation of Science and Technology Projects” was adopted by 1998 Government resolution N°14. According to this procedure, the government-contracted project shall be financed by the funds of the Science and Technology Fund and the local administrative body contracted research, experimental and innovation works shall be financed by the local budget funds. When making a choice from and deciding on the bids received, the working group makes a conclusion after its assessment and evaluation of certain project outcome criteria such as the research contemplated within the project framework, the procurement of facilities and materials to conduct experimental works and the methods of regulating

some specific relations that may occur with regard to the ownership and exploitation of the outcomes produced by the project. Taking into consideration the conclusions of the working group adopted by the Government, the meeting of the National Council of Science and Technology makes the final decision. Upon the decision rendered, the parties conclude an agreement on the project execution and funding. The duty of a non-governmental organization executing the special functions of the state executive body and, in particular receiving the government funds, to account for its work before the relevant Minister of Mongolia is stated in the Law on Government of Mongolia.

Although it is possible to mention the examples of non-governmental organizations that received the government funds, support and assistance, it is also impossible not to mention the incidents of waste of government funds. In view of the declaration of the year of 1998 to be the Year of Youth worldwide, Mongolia also made plans to organize different activities on the advancement of youth education and development. Within this framework, 150 Million MNT was provided from the state budget to the Union of Mongolian Youth with the purpose to support its activities and finance the activities to be organized for the Youth Year event. However, the fact that the government granted funds were wasted for the big show performances, but not for other activities useful and helpful to the youth had been widely criticized at that time. Notwithstanding, the fact whether the control was exercised upon the disbursement of those funds still remains a puzzle to the public. Therefore, there is an urgent need to sophisticate and strengthen the control mechanism for expenditure of government funds by non-governmental organizations.

11.3. PRIVATIZATION

Consideration should be given using civic organizations to privatize various state assets or programs (e.g., educational, medical, research, or cultural) that could be run more efficiently by a civic organization or that could be supported in whole or in part through private donations, but that cannot become self-supporting in the private economy.

In the last years, the Mongolian health, cultural and educational sector has been undergoing significant changes. Although each level of education in Mongolia was provided free of charge, gradually it had become burdensome for the government to provide material and technological resources and it was proven to be not that much publicly beneficial. Therefore, since 1993 the number of private schools providing higher education in social and economic sciences for fee has proliferated. If there was no single private school of any level of education 10 years from now, 129 private universities in total and significant number of middle and primary schools have been established up to this date. All of these schools operate by the specific amount of tuition paid by admitted students and apprentices. As per state schools, they started to provide education for fee, but they remain non-privatized. The situation was the same for the health sector and the process of opening wide range of private hospitals with foreign and domestic investments specialized in different areas is in progress. However, it is apparent that some of them strive not to provide the public good, but only for private profit making.

The privatization process of organizations within the aforementioned sector has not been embarked yet, and the issue has been raised recently. Their privatization shall bring positive results. Particularly, the complete or partial privatization of places open to the public such as museums and theatres to non-governmental organizations or private individuals could significantly improve the quality of their services and the financial self-support capability. These results are proven by the experience of privatization done in other sectors. However, it is important to privatize them not by a simple auction, but through tender offers to organizations and private individuals capable of continuing and improving their further operations. There also bitter experiences exist when the privatization of a number of state enterprises was achieved through auctions and stock offerings which ended for some by bankruptcies, but not by success. Therefore, good planning is essential for their privatization.

CHAPTER 12

MEHTODS OF VOLUNTARY REGULATION

12.1. METHODS AND SUBJECTS OF VOLUNTARY REGULATION

Although basic standards of conduct and requirements for all formal civic organizations should be enacted as published laws, civic organizations should be permitted and encouraged to set higher standards of conduct and performance through voluntary regulation.

It was discussed in the preceding chapters that the activities of non-governmental organizations are regulated by the Law of Mongolia on Non-Governmental Organizations and by the charter of non-governmental organizations. The issues of fundraising, work assignment travel expenses, employee salaries and bonuses, dual institutional affiliation of members, employment conditions and professional ethics are not reflected in the bylaws.

Although all non-governmental organizations are obliged to have internal rules reflecting these issues, majority lacks them. However, the non-governmental organizations with permanent operations and wide scope of activities are common to adopt and enforce such internal rules.

The Law on Non-Governmental Organizations does not have a specific provision that permits or prohibits the adoption and the enforcement of such internal rules. However, the new Employment Law adopted in 1999 provides that these issues may be included in the employment contract between the employer and employee on their discretion. /Chapter 3/.

12.2. UMBRELLA ORGANIZATIONS

12.2.1. The laws should permit and society should encourage the formation of umbrella organizations to enforce principles of voluntary regulation.

12.2.2. “Watchdog” organizations should be permitted to monitor and evaluate organizations in the civic sector.

It is not uncommon for Mongolian non-governmental organizations to form umbrella organizations in order to coordinate their activities and better influence the government policies and decisions. For instance, 19 non-governmental organizations joined to create the Association of Mongolian Environmental Non-Governmental Organizations in April 2000 and the Coalition of Women Non-Governmental Organizations was established in February 2000.

The “Coalition of Women Non-Governmental Organizations” has a purpose to implement the gender policy in Mongolia and increase the participation of women in the Parliament. It is a public benefit non-governmental organization that joined 27 organizations in itself. From 72 women candidates to July 2000 State Ih Hural elections, 8 were elected as the Member of the State Ih Hural and 4 of them previously supported the objectives of the Coalition of Women Non-Governmental Organizations. In order to obtain more support, the Coalition would exercise control on the position of the State Ih Hural women members on the gender equality during their voting on the issues of social and economic policy.

Except for this, the “Mongolian Association for Environmental Protection” is an umbrella organization formed in 1975. The Association has 390 member organizations and 34 local councils in 21 Aimags and the Capital City. The activities of the Mongolian Association for Environmental Protection are directed towards the creation, support of and cooperation with non-governmental organizations protecting the nature and environment, the implementation of projects for revival of the traditional methods of environmental protection and public ecological education and training, dissemination of the environmental information to the public, publicizing the country’s nature and environment by extending international relations and for the protection of rare flora and fauna /Gobi bears, Przewalskii horses and leopards/ of Mongolia.

In addition, the organizations the statuses of which are defined specifically by the law may be considered as umbrella organizations. The Association of Mongolian Advocates is the umbrella

organization. The Association of Advocates is a not-for-profit voluntary organization and has in total 22 local councils in Aimags and the Capital City. /The Advocacy Law of Mongolia, Article 6, Section 1, para.1, 3/. Moreover, numbers of organizations such as the “Association of Homeowners” and the “Union of Mongolian Cooperatives” are actively operating.

There is no non-governmental organization that is to supervise, i.e. is created on the basis of the law or permit that gives it the right to exercise control over whether the non-governmental organizations conduct their activities in conformity with their charter or whether the financial operations of non-governmental organizations violate the law. However, an umbrella organization that regulates the activities of non-governmental organizations united for the same specific purpose may exercise control if its member organizations permit such actions in their internal rules.

It was previously mentioned that according to the State Audit Law, the State Audit Committee might exercise control over the activities of non-governmental organizations receiving government funds on the basis of the contract concluded with the government or an authorized state organ.

Generally, a non-governmental organization that defines the status of non-governmental organizations that could be formed according to the relevant laws as mentioned in section 3.2 of Chapter 3 may be empowered to supervise, examine and evaluate the activities of other non-governmental organizations. However, it is necessary to adopt the specific procedures or insert the specific regulation into the law, which would allow the unambiguous and careful regulation of the activities of such organizations.